

R (on the application of **Protectbath.org and victims of Fullers Earth Ltd) v
Bath and Northeast Somerset Council**

[2015] EWHC 537 (Admin)

Queen's Bench Division, Administrative Court (Bristol)

Mr Justice Hickinbottom

3 March 2015

Town and country planning - Permission for development - Outline permission - Claimant seeking judicial review of defendant local planning authority's decision to grant outline planning permission to interested party for residual waste facility and associated development - Whether existing use of land being safeguarded - Whether officer's report and planning committee failing to grapple with harm to Green Belt - Whether officer's report and planning committee erring in proceeding on assumption development not causing detrimental effect.

Judgment

Richard Drabble QC (instructed by **Harrison Grant**) for the **Claimant**

Richard Humphreys QC and Thea Osmund-Smith (instructed by **the Principal Solicitor, Bath and North East Somerset Council**) for the **Defendant**

The **Interested Party** was not represented and did not appear

JUDGMENT: APPROVED BY THE COURT FOR HANDING DOWN (SUBJECT TO EDITORIAL CORRECTIONS)

MR JUSTICE HICKINBOTTOM:

Introduction

1. In this claim, the Claimant challenges the decision of the Defendant local planning authority ("the Council") dated 4 August 2014 to grant outline planning permission to the Interested Party ("the Developer") for a residual waste facility and associated development on land at Fosseyway Environment Park, Fosseyway, Englishcombe, Bath ("the Proposed Development Site").

2. Before me, David Forsdick QC having settled the grounds of claim and the skeleton argument, Richard Drabble QC has appeared for the Claimant; and Richard Humphreys QC and Thea Osmund-Smith for the Council. At the outset, I thank them all for their respective contributions.

Legal Principles

3. The claim hinges to some extent upon criticisms of the Council Officer's Report, upon which the decision of the Council (through its Development Control Committee) was made, seen in the light of relevant planning policy. That report recommended approval of the proposed development, a recommendation which the Committee followed.

4. The relevant legal principles relating to such reports are well-established.

- - i) In the absence of contrary evidence, it is a reasonable inference that members of the planning committee follow the reasoning of the Officer's Report, particularly where a recommendation is adopted, as it was in this case.
- - ii) A report has to be sufficiently clear and full to enable councillors to understand the important issues and the material considerations that bear upon them; and decide those issues within the limits of planning judgment that the law allows them. Whilst the report must be sufficient for those purposes, the courts have stressed the need for reports to be concise and focused, and the dangers of reports being too long, elaborate or defensive (see, e.g., *R (Morge) v Hampshire County Council* [2011] UKSC 2 at [36], per Baroness Hale; and *R (Maxwell) v Wiltshire Council* [2011] EWHC 1840 (Admin) at [43], per Sales J as he then was).
- - iii) If the material included is insufficient to enable the planning committee to perform its function, or if it is misleading, the decision taken by the committee on the basis of a report may be challengeable. However:
- - "[A]n application for judicial review based on criticisms of the planning officers' report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken" (*Oxton Farms, Samuel Smiths Old Brewery (Tadcaster) v Selby District Council* (18 April 1997) 1997 WL 1106106, per Judge LJ).
- - iv) Furthermore, when challenged, officers' reports are not to be subjected to the same exegesis that might be appropriate for the interpretation of a statute: what is required is a fair reading of the report as a whole (*R (Zurich Assurance Limited trading as Threadneedle Property Investments) v North Lincolnshire Council* [2012] EWHC 3708 (Admin) at [15]).
- - v) In construing reports, it has to be borne in mind that they are addressed to a "knowledgeable readership", including council members "who, by virtue of that membership, may be expected to have a substantial local and background knowledge" (*R v Mendip District Council ex parte Fabre* (2000) 80 P & CR 500, per Sullivan J as he then was). That background knowledge includes "a working knowledge of the statutory test" for determination of a planning application (*Oxton Farms*, per Pill LJ) and also relevant development plan policies.

5. The principles relevant to the proper approach to planning policy are equally uncontroversial:

- - i) The interpretation of policy is a matter of law, not of planning judgment (*Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13).
- - ii) National planning policy, and any relevant local plan or strategy, are material considerations; but local authorities need not follow such guidance or plan, if other material considerations outweigh them.
- - iii) Whereas what amounts to a material consideration is a matter of law, the weight to be given to such considerations is a question of planning judgment: the part any particular material

consideration should play in the decision-making process, if any, is a matter entirely for the Council (*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 at page 780 per Lord Hoffman).

Background

6. This claim concerns waste disposal facilities.

7. European Directive 2008/98/EC (the Waste Framework Directive) lays down measures to protect the environment by preventing or reducing the adverse impacts of resource use, and the generation and management of waste. A key principle of the Directive is the waste hierarchy, which requires waste issues to be addressed as close as possible to source. Thus strategies are required to prevent the generation of waste and, where this is not possible, to reuse, recycle or recover waste, so that disposing of waste by landfill is a last resort. The Directive is reflected in national waste policy as set out in Waste Strategy for England 2007, and Planning Policy Statement 10: Planning for Sustainable Waste Management 2005 ("PPS10") which, reflecting the Directive principle, sets out the following waste hierarchy, namely waste prevention, reuse, recycling/composting, energy recovery and, finally, disposal. PPS 10 emphasises that sustainable development can be assisted by managing waste as high up this hierarchy as possible, encouraging planning authorities to identify suitable sites for new waste management facilities in this context.

8. Two categories of facility are relevant to this claim. Non-Residual Waste Treatment Facilities ("NRWF") are those facilities required to process and treat waste to enable as much of it to be recycled as possible. Residual Waste Treatment Facilities ("RWF") are those concerned with the mechanical, biological, thermal and aerobic treatment of the balance, designed to reduce the proportion then left for disposal by landfill to a minimum.

9. By 2007, it was very apparent that the West of England had insufficient NRWF and RWF. Indeed, no RWF existed in the area at all.

10. With a view to addressing this shortfall, four local authorities (Bath and North East Somerset Council, Bristol City Council, North Somerset Council and South Gloucestershire Council, together known as "the West of England Partnership") joined together to prepare an appropriate joint strategy for their sub-region. They appointed consultants to assist them with site selection and sustainability appraisal.

11. One location considered was that with which this claim is concerned, which falls within the Green Belt. National policy relating to Green Belt land is found in Part 9 of the National Planning Policy Framework ("the NPPF"). By paragraph 89, subject to exceptions irrelevant to this claim, the construction of new buildings in the Green Belt is inappropriate development. Paragraphs 87-88 provide:

- "87. ... [I]nappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
- 88. When considering any planning application, local planning authorities should ensure that substantial weight is given to harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations."

Policy CP8 in the Core Strategy for Bath and North East Somerset, which forms part of the statutory development plan, substantially replicates this national policy.

12. The plot of land with which we are concerned comprises two distinct areas. First, there is an area of large tall buildings which was previously part of works for the extraction and processing of Fullers Earth.

That particular use has long since ceased, and it has for some years been used as an NRWF. In effect, through long usage and a lack of enforcement, it has existing B2 (General Industrial) Town and Country Planning (Use Classes) Order 1987 (SI 1987 No 764) use rights. I shall refer to that area as "the Existing Developed Land" or "the EDL". The second area is L-shaped wrapping round two sides of the EDL, which has no relevant existing lawful use rights, being, in law, open and undeveloped land. However, it was at the relevant time - and currently is - used for unauthorised waste related activities, particularly the stockpiling of waste, in respect of which enforcement action is ongoing. I shall refer to this area as "the Open Land". I shall refer to the EDL and the Open Land together as "the whole site".

13. In due course, the West of England Partnership prepared a Joint Waste Core Strategy Development Plan Document ("the JWCS"), which was subject to examination by an inspector appointed by the Secretary of State. He reported on 3 February 2011 that the JWCS satisfied the statutory and policy requirements, and it was consequently adopted in March 2011.

14. Part 4 of the JWCS sets out the strategic objectives, one of which is (unsurprisingly) to move the management of waste up the waste hierarchy, "by increasing waste minimisation, recycling and composting then recovering further value from any remaining waste, and only looking to landfill for the disposal of pre-treated waste" (paragraph 4.3). That objective is to be attained by, amongst other things, encouraging NRWF and RWF, both of which are regarded as key (see paragraphs 4.4.3 and 4.4.4).

15. With regard to NRWF, whilst no specific sites are identified, it is noted that the draft Regional Spatial Strategy calls for an additional 0.8m tonnes of recycling and composting capacity for the sub-region by 2020, and the Waste Strategy for England 2007 increased the proportion of waste to be recycled/composted to 50% by that same year. Significant NRWF were therefore required over the JWCS plan period (see paragraphs 6.3.1 and 6.4.1).

16. With regard to RWF, Policy 5 identifies locations where:

- "Planning permissions for development will be granted for development involving the treatment of residual wastes where it supports the delivery of the Spatial Strategy..."

17. These include, as BA12, the whole site. The Key Development Criteria for the site include:

- "Site Design: A high standard of design is expected for both built development and site layout, including landscaping, the relationship with nature conservation and geological interest on site."
- "Green Belt: Any development should be designed to minimise any impact on the openness of the Green Belt."

18. Paragraph 6.5.6 of the JWCS states:

- "Sites identified within Policy 5 may also be appropriate for non-residual waste related facilities, but not at the expense of delivering residual waste treatment capacity, and provided the development meets the identified Key Development Criteria..."

This, Mr Humphreys submitted with some force, is consistent with the sub-regional need for both RWF and NRWF; and implicitly recognises the obvious advantages of co-location subject to ensuring that the RWF capacity requirement is satisfied.

19. The JWCS also contains safeguarding provisions. Paragraph 4.4.9 states:

- "Operational and allocated waste sites are safeguarded by Policy 13."

Under the heading "Safeguarding Operational and Allocated Sites for Waste Management Facilities", Policy 13 provides:

- "Operational waste sites are safeguarded, except where alternative suitable facilities are to be provided as part of an authority approved strategy.
- The specific sites listed in Policy 5 are safeguarded to deliver the Spatial Strategy. Where proposals would prejudice the implementation of the JWCS, consideration will be given as to how they could be amended to make them acceptable, or, where this is not practicable, to refusing planning permission."

I shall refer to the safeguarding provision in the first paragraph as "the first limb", and that in the second paragraph as "the second limb", of Policy 13.

20. Paragraph 6.15.2 explains:

- "... The purpose of safeguarding sites in existing waste use or allocated for waste treatment facilities is to ensure that these locations are not lost to non-waste development."

The Application

21. On 20 February 2014, the Developer made an application to the Council for outline planning permission for RWF, on land comprising mainly, but not exclusively, the Open Land. The development encroached to a small extent onto the EDL, although it left the buildings etc on that land entirely in tact.

22. There were a number of objections, including objections from the Claimants. The Council's Development Control Committee considered and approved the application, on the basis of the usual Officer's Report. Outline Planning permission was granted on 4 August 2014. It is the decision to grant that permission which is challenged in this claim.

The Claim

23. Mr Drabble relies upon several grounds, but, at the heart of his submissions is the proposition that, on its true construction, the existing use of the EDL was not safeguarded by the first limb of Policy 13, which was in effect overtaken by (and as a result of) the allocation of the whole site to RWF use by Policy 5. As a result, there was an "essential underlying assumption" that development pursuant to the allocation would replace and not add to the built development thus replacing the extant buildings - which the skeleton argument describes as "large and unsightly" - with a properly planned and landscaped waste facility. But, even if that were not the case, it was impossible for one site to be safeguarded by more than one provision, and Policy 5 was, in effect, predominant. The allocation was of the whole site, and, on the basis of the allocation, planning permission for RWF use was in principle available for the whole site. Following discussions with the site owner, Environmental Resources Management (who prepared the Revised Detailed Site Assessment Report in September 2009) said that they assumed the whole site "to be available in the short term". The Key Development Criteria for the site in Appendix 1 to the JWCS did not require existing use of the EDL to be safeguarded or retained: the criteria appear to have been drafted on the basis that they applied to the

whole site. Thus, when the JWCS was read as a whole, the current EDL use as a NRWF was not safeguarded. It was crucial to the analysis of the Officer's Report that it was. The Committee in adopting that analysis erred in law. There is no doubt that this part of the analysis was material (indeed, crucial) to their decision.

24. Alternatively, if the first limb of Policy 13 did safeguard the current EDL use as an NRWF, Mr Drabble submitted that the Officer's Report erred in simply relying upon that safeguarding effect, and not having regard to the planning merits and demerits of the two competing safeguarding provisions, in the context of the Key Development Criteria. These required consideration site design and minimisation of any impact on the openness of the Green Belt over the whole of the allocated site. The Officer's Report only considered them in the context of the new proposed development, and any future development of the EDL: it did not consider them in respect of the site as a whole, comprising the new proposed development and the existing NRWF on the EDL. If the continued presence of the existing development had been judged to be inconsistent with the site design or Green Belt requirements for the whole site, as it might have been, then that would have led to the application being refused or, at least, that breach of policy would have been a material factor which the Officer's Report, and in its turn the Committee, would have been bound to take into account. In any event, the decision to grant is unlawful, and should be quashed.

25. Grounds 2 and 3 rely upon the same essential premise. As Ground 2, Mr Drabble, relying upon *The Governing Body of Langley Park School for Girls v London Borough of Bromley* [2009] EWCA Civ 734 ("*Langley Park*"), submits that, in determining to grant the application, the Committee failed to consider an obvious alternative, namely whether the development could be located at least in large part on the EDL to minimise the impact of the development on the Green Belt as it was required to do. As Ground 3, he submits that the Council could not have rationally concluded that very special circumstances exist to allow this development in the Green Belt, when there is an obvious means on the same site to reduce the harm to the openness of the Green Belt by placing the development or a large part of it on the EDL. Mr Drabble, rightly, considered that the first three grounds were essentially interlinked and stood or fell together.

26. Mr Forsdick's grounds and skeleton argument relied upon two further grounds, upon which Mr Drabble did not elaborate at the hearing today; nor did he abandon them. They are as follows.

- *Ground 4:* The Report and thus the Planning Committee failed to grapple with the harm to the Green Belt caused by the proposed development, regarding the acceptability of the development to have been effectively settled by the allocation in the JWCS.
- *Ground 5:* The Report and thus the Committee proceeded on the basis of a conclusion or assumption that the proposed development caused no detrimental impact. In doing so, they erred in law because (i) there was patently detriment, notably in respect of openness, and/or (ii) they gave no reasons for concluding or assuming there was not.

27. In granting permission to proceed on 3 November 2014, Cranston J indicated that he did not consider Ground 1 arguable. No renewed application for permission was made. In the circumstances, Mr Humphreys suggested in his skeleton argument that this in effect removed Grounds 1, 2 and 3, because they were all based on the same foundation. That suggestion, although lightly put, appears to me to have some merit. However, as Cranston J's order is possibly ambiguous as to the grounds on which he granted permission and as each of the grounds has been fully argued before me, I will deal with them all.

Grounds 1, 2 and 3

28. However, despite Mr Drabble's efforts, I am afraid I am as unimpressed by his primary submission in respect of Ground 1 as was Cranston J.

29. It is my firm view that, on its true construction, the existing use of the EDL was safeguarded by the first limb of Policy 13 of the JWCS, despite the allocation of the whole site by Policy 5.

30. In coming to those conclusions, I have particularly taken into account the following.

- - i) It is noteworthy that a site allocated under Policy 5 of the JWCS is allocated for "development *involving* [not restricted to] the treatment of residual waste..."; and it is clear from that, and paragraph 6.5.6, that one site may be developed for both RWF and NRWF purposes, subject of course to the restrictions on such development imposed by Policy 13 and paragraph 6.5.6. As Mr Humphreys submitted, there are obvious advantages in co-locating the two.
- - ii) The JWCS allocated the whole site (including the Open Land) for that use, in the Green Belt, after detailed consideration, had determined that there was a need for such facilities and a lack of alternative sites. That consideration included an inspector's examination, in which all, including the Claimants, had an opportunity to contribute.
- - iii) The allocation in the JWCS could have restricted the allocation to the EDL, or, through the Key Development Criteria, could have required any proposed development to use the EDL in preference to the Open Land and/or required that, in any development of the site for waste management purposes, the existing buildings be removed. It singularly did not do so.
- - iv) The Officer's Report considered that the RWF proposed largely on the Open Land would fulfil immediate and medium term requirements for such facilities; and that no alternative NRWF were available. The report indicated that, of an indicative capacity of 150,000 tpa identified in the JWCS, the proposed facility would deliver 100,000 tpa; and the remainder of this allocated site (or another site at Broadmead Lane) were available if further capacity were needed before the end of the plan period (i.e. before 2026). Further, the report concluded that the proposed development would not prejudice an extension on the same to accommodate more capacity, nor prejudice such further development being of high standard in respect of site design. Those judgments are not challenged, and are unchallengeable.
- - v) As Mr Humphreys emphasised, it is surprising that there is no reference at all to Policy 13 in the Claimant's Particulars of Claim. The relevance and importance of that policy was raised in paragraph 6 of the Council's Summary Grounds of Resistance. In fact, Policy 13 is key to this claim.
- - vi) Mr Drabble submitted that a particular site could not be safeguarded under both limbs of Policy 13 - indeed, that was the premise upon which his submission was founded - but I do not agree. Safeguarding provisions such as these, as a matter of policy, merely prohibit development of a particular kind. The first limb of Policy 13 safeguards existing operational sites, whether RWF or NRWF, against any development without a suitable alternative being provided for the facilities that will be lost. The second limb safeguards specific allocated sites against development that does not involve RWF. Where a site, such as this, is both an operational NRWF site, but is also a site allocated for RWF development, there is no conceptual or practical discordance in it being safeguarded for both purposes. For the Site, Policy 13 had the effect of safeguarding the existing operational waste facility site unless it was required for RWF and alternative NRWF facilities were available.
- - vii) The JWCS must be looked at as a whole. Given that the use of the EDL for NRWF was safeguarded (so that it could not be removed unless a suitable alternative was provided), the document read as a whole clearly contemplated, not that RWF development on the site should

use the EDL in preference to the Open Land or should require the existing building be removed, but rather that it might be co-located on the site with the existing NRWF.

- viii) *Langley Park*, relied upon with some weight in the skeleton argument but not pressed upon me by Mr Drabble today, is readily distinguishable, primarily (although not exclusively) on the ground that, in that case, the existing use was not safeguarded as the use of the EDL is here. In that case, an application was made for planning permission for the demolition of most of a boys' school, and the construction of a new school on the same site but largely on what were the playing fields. The site was in the Metropolitan Open Land ("the MOL"), i.e. effectively Green Belt land. An objection was received (from the adjacent girls' school) that, by placing the new buildings where proposed as opposed to wholly or largely on the site of the buildings to be demolished, the proposed development would severely reduce openness and visual amenity. It was held that the planning authority had failed to take into account that the proposed development would severely injure the openness and visual amenity of the MOL, and that that injury would be greatly reduced if the layout was revised so that the new buildings were sited largely on the built up land as opposed to the open land. They had given no effective consideration to alternative development sitings within the site. However, here (i) unlike the *Langley Park* case, Policy 13 of the JWCS safeguards, not just the allocation, but the existing operational facilities on the EDL, which cannot simply be removed; (ii) unlike the *Langley Park* case, the whole site has been allocated to be built upon, and (iii) unlike the *Langley Park* case, consideration was given to alternative layout/setting but, given that the EDL was safeguarded and the future redevelopment of that land to a high standard was not precluded or prejudiced, it was not considered to be appropriate (see below). *Langley Park* had none of these highly material features, but notably the use of the site for the old school was not safeguarded as the use of the EDL for NRWF is here. Indeed, given the safeguarding of the existing use of the EDL, unless the need for RWF demanded the development of the whole site and there was a suitable alternative location for the existing NRWF operation, it would have been contrary to policy to have required the redevelopment of the EDL.

31. For those reasons, I consider the proposition upon which the primary submission in respect of Ground 1 is based to be flawed. In my judgment, there is no incongruity in a single site being the subject of both limbs of the safeguarding provisions in Policy 13; and the use of the EDL as an NRWF was safeguarded by the first limb of that policy. There was no "underlying assumption" in the allocation that development pursuant to that allocation would replace and not add to the built development thus replacing the extant buildings with a new integrated planned and landscaped waste facility - any such implied assumption there might otherwise have been could not stand in the light of the safeguarding provision in the first limb of Policy 13 - and the Council did not err in construing the allocation of the whole site in the JWCS as permitting development on any part of the site whilst retaining the existing NRWF use of the EDL.

32. In substance, that also deals with the alternative argument Mr Drabble evolved in relation to Ground 1 - that, if the first limb of Policy 13 did safeguard the current EDL use as NRWF, the Committee were bound to consider the planning merits of each of the safeguards in terms of site design and minimisation of openness impact over the whole allocated site - because it was premised upon the first and second limbs of Policy 13 being "competing". As I have described, they were not competing: they were complementary.

33. The allocation requirements in respect of site design and to minimise the impact on openness were made in the context that new RWF development on the site might be permitted alongside the existing facility.

34. In fact, the Officer's Report and Committee did not just have regard to the proposed development when considering the Key Development Criteria. As I have already indicated, they considered the possibility of future development of the EDL, and concluded that that land would be available to assist with capacity for RWF and that the proposed development would have no detrimental impact on the ability to have high site design standards for such further development. Further, the landscaping regime was considered on a whole site basis: the report says expressly that "the proposed

landscaping scheme was enhanced to treat, in landscaping terms, the allocated site as a whole to ensure it was enclosed by a high quality landscaping scheme".

35. The proposed development would clearly adversely affect openness; and the Report acknowledged that. However, it did not specifically consider whether the impact on openness was unacceptable because there may have been a benefit from the removal of the existing buildings etc as, for the reasons I have given, the EDL use was safeguarded and could not be dispensed with or removed (except on the basis that alternative suitable facilities were provided as part of a strategy approved by the Council) - and the JWCS envisaged the possibility of new development and the EDL development co-existing on the same site. The Report simply had to consider the impact on openness of the proposed development - of course, taking into account the relevant existing development, including that on the EDL - which it did.

36. For those reasons, I share Cranston J's view of Ground 1. Certainly, I do not find that, despite his laudable efforts, Mr Drabble has made any part of it good. Ground 1 thus fails. Grounds 2 and 3 founder upon the same rock.

37. The flawed proposition also runs through the remaining grounds; but, for the sake of completeness, I should briefly deal with them discretely.

Ground 4

38. As Ground 4, Mr Forsdick's grounds and skeleton submitted that the allocation in Policy 5 of the JWCS left over consideration of the impacts of any specific form, scale or location of any development against the Green Belt criteria; but the Committee regarded these issues as having been effectively settled by the allocation itself. As a result, they did not grapple with the issues themselves. They did not address the harm the proposed development would cause by reason of its inappropriateness or its impact on openness.

39. However, looked at as a whole, I consider the Officer's Report did sufficiently raise and address these issues. The report unfortunately does not benefit from paragraph or page numbers; but the officer set out the relevant Green Belt policies, setting out the purposes of including land in the Green Belt and the objectives for the use of land within the Green Belt, from the Core Strategy Policy which (as he noted) reflected the national policy in the NPPF. Importantly, he set out the substance of paragraphs 87-89 of the NPPF, to which I have already referred, in terms which are patently appropriate and adequate. He noted that the proposed buildings are an inappropriate development in the Green Belt and therefore it was necessary to require very special circumstances to justify the development. He noted the need for such development and the lack of alternative sites; and, correctly, that the principle of development had been accepted by the adoption of the JWCS which included the allocation of this site for this type of development. He then set out, over several pages, in turn, the adverse impact of the development so far as site design, landscape, cultural heritage, ecology, land contamination, highways, flooding, drainage, other environmental factors and other various matters are concerned. He acknowledged that the some harm would be caused, including harm to openness. However, he noted that the new buildings were restricted to the centre and back of the site, ground levels are to be lowered to reduce roof height and landscaping around the buildings would provide screening; and that the Council's landscape adviser considered that, with appropriate amendments (e.g. removing the stockpiles from the Open Land and lowering the ground levels as proposed), the scheme would not be visually detrimental to the Green Belt in this location. Importantly, as intermediary conclusions, he concluded that (i) the proposal would not compromise the development of the remainder of the Site for its intended (i.e. allocated) purpose or its ability to achieve a high standard of design in that further development; and (ii) having regard to the proposed design, layout and proposed landscaping, the impact on the openness of the Green Belt had been minimised. Noting that the test was whether the very special circumstances clearly outweigh the harm by reason of inappropriateness and any other harm, he ultimately concluded that such circumstances had been demonstrated.

40. When looked at as a whole, that analysis is in my judgment unimpeachable.

Ground 5

42. Finally, I turn briefly to Ground 5. The Officer's Report said:

- "The assessments undertaken indicate that there would be no significant effects on... the Green Belt...".

In the grounds and skeleton argument, Mr Forsdick submitted that this conclusion is unreasoned; and, particularly in respect of openness, is inexplicable and patently wrong.

43. However, I am entirely unpersuaded. This sentence cannot be looked at in isolation. When the Report is looked at as a whole, the author clearly understood the relevant Green Belt policies (which he recites) and their importance; and adopted the correct approach to his task under those policies. The Report clearly recognised that there would be some detriment to openness as a result of the proposed development - because the Report concludes that the impact on openness is minimised by various steps it was proposed to take in relation to landscaping etc. There is, in my respectful view, nothing in this ground.

Conclusion

44. For those reasons, none of the grounds is made good; and I dismiss the claim.