

Neutral Citation Number: [2025] EWHC 1331 (Admin)

Case No: AC-2024-LDS-000010

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

Leeds Combined Court Centre
1, Oxford Row, Leeds, LS1 3BG

Date: 04/06/2025

Before :

KAREN RIDGE SITTING AS A DEPUTY HIGH COURT JUDGE

Between :

THE KING
(on the application of ANIMAL EQUALITY UK)

Claimant

- and -

NORTH EAST LINCOLNSHIRE BOROUGH
COUNCIL

Defendant

-and-

ASL NEW CLEE LIMITED

Alex Shattock (instructed by **Animal Equality UK**) for the **Claimant**
Andrew Parkinson (instructed by **Legal Services, North East Lincolnshire Council**) for the
Defendant
James Strachan KC (instructed by **Eversheds Sutherland (International) LLP**) for the
Interested Party

Hearing date: 12 February 2025

FINAL JUDGMENT

Deputy High Court Judge Ridge:

Introduction

1. This judicial review arises from a decision of the Defendant, North East Lincolnshire Borough Council (“the Council”), to grant planning permission for an onshore salmon farm on Land off Salvesen Road, Cleethorpes (“the Site”). The Claimant is a non-governmental organisation concerned with animal welfare, with a focus on farmed animals, including fish produced by salmon farming. The Claimant is opposed to the salmon farm. The Interested Party (IP) is a salmon farming operative and the owner of the Site on which it aims to develop the UK’s first wholly on-shore salmon farming operation.
2. On behalf of the Claimant, Mr Shattock argues that in resolving to grant planning permission the Defendant’s planning committee were materially misled in that they were advised that animal welfare concerns were not a material consideration to be taken into account in their decision making.

Background

3. The IP sought full planning permission from the Defendant Council for the following development on the Site:

“erection of an onshore aquaculture farm (Sui Generis) with associated water extraction and effluent discharge from and to Grimsby Docks, alongside ancillary processing, energy centre, access, car parking, servicing, external lighting and landscaping and associated infrastructure”
4. The planning application was submitted on 20 June 2023 and it was duly advertised and comments were received from various individuals and other organisations. By letter dated 23 November 2023 the Claimant made representations to the Planning Committee setting out its objections on the basis of intense energy and water consumption and high effluent levels and further relying on the concerns about animal welfare set out in a letter of Mr Mark Borthwick dated 5 October 2023, an aquatic animal expert. Those concerns related to the pain and suffering felt by animals being kept in highly cramped

tank conditions leading to high death rates, disease and cannibalism and the risks of electricity supply interruptions leading to mass fish mortality.

The Officer's Report ("OR")

5. The OR begins with a description of the proposal and the site, followed by relevant planning policies, before going on to provide details of the representations received. The objections include "welfare of the fish being farmed and the principle of fish farming".
6. The report officer next begins his own appraisal by setting out the main issues as follows:

"Main Issues

1. Principle of the Development.
 2. Local amenity and visual impact.
 3. Ecology.
 4. Highways.
 5. Drainage and Flood Risk.
 6. Permit Requirements."
7. Under the heading 'Principle of Development' there is the following paragraph:

"Regarding fish welfare and the moral concerns of fish farming that have been raised in representations received whilst these concerns are noted they are not considered to be material land use planning considerations. Indeed, in that way the proposal is akin to other well established on land intensive livestock units such as for chickens, turkeys and pigs."
 8. Under the heading 'Permit Requirements' the report advises:

"The nature of the proposed use means that it requires a number of separate permits. The permits required cover a wide range of aspects of the development and future use. This includes water abstraction and discharge, fish welfare and operating methods. National Planning Policy Guidance is clear that Planning should not seek to duplicate control. The applicant has stated that the following bodies are involved in such permitting:

Centre for Environment, Fisheries and Aquaculture Science (CEFAS)
Fish Health Inspectorate (FHI)
Environment Agency (EA)

Food Standards Agency (FSA)
British Veterinary Association (BVA)
Best Aquaculture Practices (BAP)”

9. Finally, the report finishes its analysis of the various issues as follows:

“CONCLUSION

In conclusion it is considered that the proposed development would not cause harm to residential amenities or business amenity, the visual character of the area, drainage and flood risk, highway safety and amenity, the Humber Estuary designations, the onsite biodiversity and Local Wildlife Site allocation. Suitable mitigation has been proposed to address various aspects, as outlined in this report, these matters can be secured by condition. Furthermore, the proposal would represent a significant economic investment into the area, creating a number of jobs through construction and then operation as well as supporting the food processing and manufacturing businesses in the area. The proposal accords with Policies 5, 7, 22, 33, 39 and 41 of the NELLP and the core principles of the NPPF it is therefore recommended for approval subject to conditions.”

10. The proposed application was considered at a planning committee meeting on 29 November 2023 where objections were heard and committee members were referred to the OR, which was supplemented by further oral advice. Following a vote of 7-4 in favour of the development, the committee resolved to grant planning permission subject to conditions. The Defendant Council therefore granted planning permission¹ on 1 December 2023.
11. The Claimant made two audio recordings of the committee meeting and from those recordings a transcript was produced and is before the Court. The contents of that transcript are not disputed by the other parties. The transcript records the comments of the Planning Officer in introducing the proposal and summarising the contents of the report, he is recorded as then saying:

“In terms of other matters, the nature of the proposal means it does need extensive amounts of permit for use. This is where, in terms of what we can or can’t consider, in regards to the moral side of what is being proposed, that is not considered a material consideration. That goes along with the welfare of the fish involved as well. But this is a permitted process, it does require

¹ Reference DM/0539/23/FUL.

as we see on page 20 in the report a number of permits to ensure it is run appropriately.”

12. The various speakers are then introduced, Ms Abigail Penny, an executive director of the Claimant, spoke against the proposal, focusing on the risks of catastrophic loss of fish due to system failures. She was followed by Mr Mark Borthwick who reiterated the comments in his objection letter and commented:

“I understand that you’ve been asked not to consider animal suffering in your deliberation, even though the suffering in this case will be monumental. I also understand that your planning officers have chosen not to perform their own environmental impact assessment, despite the apocalyptic impact on the local ecosystem if this facility underperforms.”

13. Other speakers then spoke in favour of the proposal. Councillors then began to discuss the proposal. Councillor Holland makes a speech setting out his views in relation to various aspects of the proposal, during which he comments:

“The Planning Department notes state that: “Regarding fish welfare and the moral concerns of fish farming that have been raised in representations received whilst these concerns are noted they are not considered to be material land use planning considerations. Indeed, in that way the proposal is akin to other well established on land intensive livestock units such as for chickens, turkeys and pigs”. I’m not making an objection on the moral issues but would just point out that battery cages for laying hens are now illegal in the UK, farrowing crates for pigs are effectively being phased out across Europe and invertebrates such as crabs, lobsters and octopuses are now classed as sentient beings. there is a move to recognising sentient creatures. If the proposal is akin to other well-established intensive farming methods then the full aspects of that must be considered. I would support the application, but only after an Environmental Impact Assessment has shown that it is safe to do so. On that basis I would like to propose that a decision be deferred until an EIA has been carried out and the results considered”

14. Following a question from a Councillor about the existence of a secondary electricity supply, the Chairman said this:

“You certainly can. I don’t know quite that we’ve got that technical information available. Again, I’m not entirely sure it’s a material planning consideration. We do seem to be, and I know it’s part of a lot of the concerns from residents and objectors on the welfare issue, but we are here today to talk about the planning considerations. I know it’s right to discuss the different welfare issues and the ecology is certainly a planning consideration, it absolutely is. A lot of work’s been done on the ecology side of things. I’ve asked the Ecology Officer to be present at today’s meeting to answer any questions, but I don’t think that’s an ecology question, that’s more of an operational power cut question.”

These Proceedings

15. Proceedings were issued on 11 January 2024 setting out two grounds of challenge. Ground 1 was an allegation that the Defendant’s planning committee members were materially misled in relation to the legal non-materiality of animal welfare concerns. Ground 2 was an allegation that members were materially misled regarding the extent to which they were required to rely on other pollution control regimes.
16. Permission was refused on the papers by Order of HHJ Klein, sitting as a High Court Judge on the 22 March 2024. Following an oral renewal hearing on 5 September 2024, permission was granted on ground 1 by HHJ Belcher, sitting as a High Court Judge. The Claimant had chosen not to seek renewal of the claim on ground 2. At the substantive hearing there were written submissions on behalf of the Claimant and the IP about the ability of permitting regimes to consider fish welfare. Those submissions relate to the IP’s contentions under section 31 of the Senior Courts Act 1981 that the outcome was highly likely to have been the same even if members had been incorrectly advised.

17. I note that the Claimant confirmed at the renewal hearing that it was not seeking to challenge the decision on the basis that the Council acted unlawfully in relying on the permitting regimes to find that animal welfare concerns were not material. For the purposes of determining the primary issue I have not looked behind the Defendant's contention that other permitting regimes considered fish welfare matters.
18. At the substantive hearing, Mr Shattock, on behalf of the Claimant confirmed that they did not seek to rely on the statement of Councillor Holland, a member of the planning committee. Similarly, Mr Parkinson, on behalf of the Defendant, confirmed that it would not rely on the statement of Councillor Pettigrew, the chairperson of the Planning Committee. I have therefore not taken into account the contents of those two statements nor any references to them.

The Law

19. There is no dispute as to the relevant legal principles regarding material planning considerations. Whether a particular consideration is material for the purposes of section 70(2) of the Town and Country Planning Act 1990 requires firstly, consideration of whether it is a consideration capable of being material for planning purposes in that it relates to the character of the use of the land. That question is a matter of law for the Court in the event of disagreement. There is none here. The second question is whether the consideration should be taken into account in the circumstances of the particular application and that is a matter for the decision maker, subject to review on grounds of Wednesbury reasonableness².
20. Whether or not a decision-maker chooses to take into account something which is a lawful material planning consideration is a matter of discretion for the decision maker. The only exception is where there are circumstances where a material consideration is so obviously material that a decision maker is required to take it into account. All parties agree that animal welfare concerns are

² Laws L, In R(On Application of Jones) v North Warwickshire District Council [2001] EWCA Civ 315.

capable of constituting a material consideration as a matter of law. It is further agreed that a planning committee is not required to have regard to, or to disregard, animal welfare concerns but it can legitimately chose to disregard such concerns.

21. It is trite law that the weight to be attached to any material consideration is a matter for the decision maker, subject to Wednesbury unreasonableness: *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759; *R (Sainsbury's Supermarkets Ltd) v Wolverhampton City Council* [2010] UKSC 20.
22. Mr Strachan for the IP referred me to the judgment of the Supreme Court in *R(On the application of Friends of the Earth Ltd and others) v Heathrow Airport Ltd* [2020] UKSC 52 which set out observations in relation to the third category of material considerations. The first category being those identified by statute as considerations to which regard must be had; the second as those to which regard must not be had; and the third being those to which the decision maker may exercise his discretion and have regard to them if he thinks it right to do so. In relation to this third category the Supreme Court has this to say:

“120. It is possible to subdivide the third category of consideration into two types of case. First, a decision-maker may not advert at all to a particular consideration falling within that category. In such a case, unless the consideration is obviously material according to the Wednesbury irrationality test, the decision is not affected by any unlawfulness. Lord Bingham deals with such a case in *Corner House Research* at para 40. There is no obligation on a decision-maker to work through every consideration which might conceivably be regarded as potentially relevant to the decision they have to take and positively decide to discount it in the exercise of their discretion.

121. Secondly, a decision-maker may in fact turn their mind to a particular consideration falling within the third category, but decide to give the consideration no weight. As we explain below, this is what happened in the present case. The question again is whether the decision-maker acts rationally in doing so. Lord Brown deals with a case of this sort in *Hurst* (see para 59). This shades into a cognate principle of public law, that in normal circumstances the weight to be given to a particular consideration is a matter for the decision-maker, and this includes that a decision-maker might (subject to the test of

rationality) lawfully decide to give a consideration no weight: see, in the planning context, *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 (HL), 780 (Lord Hoffmann).”

23. In the case before me the Claimant does not seek to persuade the Court that the committee were required to take animal welfare concerns into account, rather that they should properly have been advised that it was open for them to do so if they wished to. The Claimant places reliance on ***R (Copeland) v London Borough of Tower Hamlets*** [2010] EWHC 1845 (Admin) (*‘Copeland’*) concerning objections to planning permission for a fast-food outlet near a school. In that case objections related to the impact on children and the decision to grant planning permission being said to be contrary to the government’s healthy weight strategy. The grant of permission was quashed on the basis that the committee had been materially misled as to the possibility of the use as a fast-food outlet being a material consideration which they could have taken into account had they chosen to do so. Whilst the Local Authority had accepted in the claim that use as a fast-food outlet was capable of being a material consideration, it had unsuccessfully argued that members had been advised that it was not material in the particular circumstances of that application.
24. The Supreme Court endorsed the view in *Copeland* that healthy eating was capable of being a material consideration in ***R (Wright) v Resilient Energy Severndale*** [2019] 1 W.L.R. 6562 (*‘Wright’*).
25. The principles to apply to challenges to a grant of planning permission were succinctly summarised by the Court of Appeal in ***R (Mansell) v. Tonbridge and Malling Borough Council*** [2019] P.T.S.R. 1452. Lindblom LJ stated as follows at [42]

“...The principles are not complicated. Planning officers’ reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in *R. (on the application of Morge) v Hampshire CC* [2011] UKSC 2 at [36], and the judgment of Sullivan J, as he then was, in *R. v Mendip DC Ex p. Fabre* [2017] P.T.S.R. 1112; (2000) 80 P. & C.R. 500 at 509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer’s

recommendation, they did so on the basis of the advice that he or she gave (see the judgment of Lewison LJ in *R. (on the application of Palmer) v Herefordshire Council* [2016] EWCA Civ 1061 at [7]). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way—so that, but for the flawed advice it was given, the committee's decision would or might have been different—that the court will be able to conclude that the decision itself was rendered unlawful by that advice.

26. The Court should assume that officer's reports to committee members are addressed to a knowledgeable readership and that proposition was confirmed by Holgate J. in *R. (on the application of Leckhampton Green Land Action Group Ltd) v Tewkesbury BC* [2017] Env. L.R. 28 when he also reiterated that:

“The purpose of an officer's report is not to decide an issue or to determine an application, but to inform the committee of considerations relevant to the application. The report is not addressed to parties interested in the application, let alone to the world at large, but to the members of the committee, who can be expected to have substantial local knowledge and an understanding of planning principles and policies. The Court should acknowledge that the members of the Committee have been trained in planning practice and law (as confirmed for this case by Ms Desmond's witness statement) and was therefore acting within its area of specialist expertise. The Court should guard against undue intervention in policy judgments made by planning committees and respect their decisions unless it is clear that they have gone wrong in law. The Courts must not impose too demanding a standard upon officers' reports, to avoid defeating their purpose.”

Ground of Challenge

27. The sole ground of challenge advanced by Mr Shattock is a claim that the Council's planning committee members were materially misled by the OR in relation to animal welfare concerns. The Claimant alleges that the committee in this case was advised that it could not take animal welfare concerns into account. The Defendant and IP dispute that, and instead contend that the advice was that, whilst the committee could take those concerns into account, officers

recommended that animal welfare concerns should not be taken into account in this case. If the scenario advanced by the Defendant and IP are correct, then Mr Shattock accepts that would constitute lawful advice.

28. Mr Shattock relies upon the wording of the OR, together with the oral advice given at the committee meeting. He further points to the comments of the committee members in their discussions which, he says, provides some insight into the understanding of members of the advice they were given.
29. Mr Shattock submits that the misdirection is first seen in the sentence “Regarding fish welfare and the moral concerns of fish farming that have been raised in representations received whilst these concerns are noted they are not considered to be material land use planning considerations”. Mr Shattock contends that the words ‘those concerns are noted’ essentially means that the concerns have been registered as having been made but that they cannot be taken into account in the assessment. Further, he contends that the words “material land use planning considerations” is a particular formulation of words used to reference the legal test of in principle materiality.
30. The next sentence reads “Indeed, in that way the proposal is akin to other well established on land intensive livestock units such as for chickens, turkeys and pigs”. Mr Shattock submits that this sentence is the justification for the preclusion in the previous sentence, namely that the animal welfare concerns are not material planning considerations.
31. Later in the report under the heading “Permit Requirements” the following advice is given:

“The nature of the proposed use means that it requires a number of separate permits. The permits required cover a wide range of aspects of the development and future use. This includes water abstraction and discharge, fish welfare and operating methods”
32. Mr Shattock says that this part of the advice is essentially the Officer confirming that he has already stated that animal welfare was not a material consideration and that this sentence is telling members that other permitting regimes will deal with fish welfare considerations.

33. Further Mr Shattock contends that the written advice is mirrored by the oral advice when the officer says at committee:

“This is where, in terms of what we can or can’t consider, in regards to the moral side of what is being proposed, that is not considered a material consideration. That goes along with the welfare of the fish involved as well. But this is a permitted process, it does require as we see on page 20 in the report a number of permits to ensure it is run appropriately.”

34. Mr Parkinson, behalf of the Defendant, and Mr Strachan on behalf of the IP, contend that, when read fairly it is clear that the OR was advising members as a matter of judgment not to take into account the welfare concerns in this case. That is because the Officer provides a reason for not taking those concerns into account and because the Officer was providing his evaluative judgment as to why animal welfare concerns should not be taken into account.
35. Both Mr Parkinson and Mr Strachan further rely on the advice under the section “Permit Requirements” which states that the development requires a number of separate permits which cover a wide range of aspects including fish welfare and operating methods. They point out that there has been no challenge to the lawfulness of that contention and that is part of the justification as to why, in this case, animal welfare was not a material consideration.
36. When read in context the Defendant asserts that it is clear that members were being advised that the judgment of Officers was that animal welfare considerations were not material in this case because reasons were supplied and because of the nature of those reasons, namely that animal welfare concerns were covered by permitting regimes elsewhere. The fact that reasons are supplied indicates that an evaluative judgment has been given.
37. Both Mr Parkinson and Mr Strachan noted that national policy specifically advises local planning authorities not to duplicate controls elsewhere and that permitting processes should be assumed to operate effectively.
38. In relation to the oral advice to committee, Mr Parkinson submits that the oral advice did not depart from the written advice provided in the OR. He says that the general tenor of the discussion indicates clearly that members understood

that animal welfare concerns were material and they were entitled to have regard to, or disregard, the OR advice that it was not relevant in this case. Mr Parkinson reminds the Court that it is important to distinguish between comments made by officers and by the members and other persons. One comment by an individual member which may be indicative of misdirection cannot be taken as probative that the OR contained a misdirection since the decision was a collective one.

39. Mr Strachan reminded the Court in relation to the third category of material considerations, if a particular non-mandatory consideration is not mentioned in an OR that would not, he says, constitute an error of law. Mr Strachan submits that a decision maker is entitled to treat non-mandatory material considerations as not being material in a particular case. That is entirely correct of course. However, at the heart of this case is the interpretation and understanding of the OR which raised animal welfare concerns and dealt with them as a non-mandatory consideration in a professional report which was before members and upon which they placed reliance before undertaking their decision making functions.
40. Mr Strachan says that the paragraph at the end of the Principle of Development section was the Officer raising animal welfare concerns and then offering a judgment as to whether it was a material consideration in this case. The paragraph in question cannot be read as the officer expressing some wider proposition of law in Mr Strachan's submissions. Mr Strachan says that the words "they are not considered to be" are not simply filler in the report but are used to indicate that an evaluative judgment is being given by the officer.
41. The words "are considered to be" and other similar formulations are used throughout the report to indicate matters on which the Officer is giving his judgment. Mr Strachan contrasts that with advice which is legal advice in terms of the application of section 38(6) Planning and Compulsory Purchase Act 2004, when the law is quoted directly and without qualification.

Analysis

42. The OR is not a legal report. It is prepared by a professional planning officer and it is intended to set out all relevant matters for consideration, together with a summary of objections. It is to be read benevolently and as a whole and is not to be subject to overly forensic examination. Part and parcel of the report is the requirement for officers to provide their own planning evaluations on a series of matters before coming to a conclusion and providing advice and a final recommendation to members. Planning members are trained and are aware that they are entitled to come to their own views on certain matters, having chosen to evaluate matters differently and subject to Wednesbury reasonableness. They must take all mandatory considerations into account and they must not take into account any considerations which statute has told them not to take into account. Other non-mandatory considerations can be considered and a view formed as to whether they are relevant in the circumstances of any particular case.
43. The OR is structured such that the main issues are first identified. The Officer was aware that objections on the basis of animal welfare concerns had been raised, they are included in the summary of responses. In the section entitled “Principle of Development”, relevant development plan policies are set out and the Officer provides a view as to whether the proposal is in conformity with those policies. He concludes that “It is therefore considered that the proposed development accords with Policies 5 and 7 of the NELLP”. That is his evaluative judgment.
44. He then moves on to consider the implications of permitted development rights and then states that “the principle of the proposed development is considered to be acceptable”. The next paragraph is the contentious one dealing with fish welfare, as follows:

“Regarding fish welfare and the moral concerns of fish farming that have been raised in representations received whilst these concerns are noted they are not considered to be material land use planning considerations. Indeed, in that way the proposal is akin to other well established on land intensive livestock units such as for chickens, turkeys and pigs.”

45. The Officer is dealing with fish welfare and “moral concerns”, acknowledging that they have been raised and stating that they are not considered to be material land use planning considerations. In the context of this sentence I do not accept that the words “they are not considered to be” are merely a literary flourish or a filler. They are flagging that the view of the Officer is that concerns in relation to fish welfare are not material. The words are not categoric, they give rise to the possibility that the concerns could be material but they are not considered to be so. They are an expression of a professional opinion as to materiality.
46. Mr Shattock urges that the term “material land use planning consideration” is a potent term referencing the legal Newbury test. That, in my view, is insufficient to establish that the Officer is advancing a general proposition of law or giving a legal direction to members. The sentence is more comfortably read as an expression of planning judgement rather than legal opinion as to materiality. The lack of any caveat to the effect that members could come to their own views is not determinative either. All of the other planning judgments in the report are expressed using the form of words “it is considered that” or similar and those judgments are not followed by statements that members can come to their own views on this issue.
47. The construction advanced by the Defendant and IP is supported by the next sentence which provides some justification for the preceding view as to materiality. The justification was that the type of development proposed was akin to other on land intensive livestock units. That justification is not one which suggests that animal welfare concerns are not legally capable of being material considerations. The giving of a reason further distinguishes this case from *Copeland* where there was an assertion that the type of food sold was not material.
48. Mr Parkinson and Mr Strachan submit that there is a second reason as to why the animal welfare concerns were decided not to be material. I am less persuaded about this point because the second purported reason does not appear in the contentious animal welfare paragraph. However, the paragraph under the heading “Permit Requirements” is instructive in my view for other reasons.

49. Returning to the structure of the report, the first main issue is the Principle of Development and I have dealt with that above. The second to fourth main issues were: Local amenity and visual impact; ecology; highways; drainage and flood risk. Thereafter the final main issue is “Permit Requirements” and it is dealt with in a single paragraph as follows:

“6. Permit Requirements

The nature of the proposed use means that it requires a number of separate permits. The permits required cover a wide range of aspects of the development and future use. This includes water abstraction and discharge, fish welfare and operating methods. National Planning Policy Guidance is clear that Planning should not seek to duplicate control.”

50. That paragraph is informing members as to other permitting regimes and reminding them of the national planning policy advice that conditions on planning permissions should not duplicate regulatory constraints elsewhere. It is instructive that the issue of fish welfare is cited within this paragraph. That indicates that, whilst the officer has previously opined that welfare concerns are not material in this application, he is informing members that such concerns will be subject to consideration elsewhere. Officer’s reports should be read as a whole and as such, the inclusion of fish welfare here acts as some reinforcement for the Officer’s earlier planning judgment that the concerns were not material. As such, I accept that it is indicative that it likely forms part of the rationale for his opinion.
51. The comments in this paragraph also support Mr Parkinson’s contention that part of the rationale for finding that animal welfare was not a material consideration was due to the existence of the permitting regimes, then that general conclusion could lawfully apply to other such applications but that does not constitute a blanket legal direction.

Comments during the Committee Meeting

52. I have set out my views on the report above. I now turn to examine the contents of the transcript. Mr Shattock alleges that the oral advice of Officers in the

meeting compounded the unlawful advice in the report. Mr Parkinson says that the advice was consistent with the written advice.

53. The starting point³ where the decision of members accords with the recommendation of a planning officer's report is that the decision was made on the basis of the advice within that report and that members adopted the advice given. The Courts have expressed reservations about the use of transcripts of planning committee meetings in an attempt to discern the approach taken. It may however be useful to look at the oral advice of the Officer and to see if that is at variance with the written advice. I bear in mind that the Officer's ex tempore remarks were made in response to certain questions and in the heat of a contentious planning application.
54. After the chairperson introduced the item the Planning Officer gave a description of the site, then went on to deal with matters raised in objection and providing his comments and advice within the commentary. He then turns to animal welfare concerns and says:

“In terms of other matters, the nature of the proposal means it does need extensive amounts of permit for use.

This is where, in terms of what we can or can't consider, in regards to the moral side of what is being proposed, that is not considered a material consideration. That goes along with the welfare of the fish involved as well. But this is a permitted process, it does require as we see on page 20 in the report a number of permits to ensure it is run appropriately.”

55. It is notable that the Officer first referenced the extensive permitting requirements of the operation before going on to reference “what we can or can't consider”. The Officer says that the moral side of what is being proposed is not considered to be a material consideration and that applies equally to the welfare of the fish. The word “but” at the beginning of the next sentence lends credence to the argument advanced by Mr Parkinson and Mr Strachan that this is a second reason for not having regard to such concerns.

³ Per Lewison LJ in *R(Palmer) v Herefordshire Council* [2017] 1 WLR 411.

56. The words “can or can’t” consider are said by Mr Shattock to be imperative, indicating that the committee are not entitled to look at such concerns on any view. However, I am conscious that the words used in a committee meeting should not be forensically dissected. The oral advice was generally in accordance with the OR. The Officer had already come to the view that animal welfare concerns should not be taken into account and whilst he uses the word can’t, that is merely a confirmation of the view he has already set out in the OR. I do not see the oral advice as representing a departure from the advice within the OR.
57. Mr Shattock further points me to statements in the meeting itself by individuals but I treat such comments with a significant degree of caution. I agree with the approach of Mr Justice Dove in *R(Village Concerns) v Wealdon District Council [2022] EWHC 2039* (Admin) when he advocated that it was necessary to approach transcripts of committee discussions with realism as to their nature in that they are different from the carefully formulated contents of an officer’s report. Comments from individual members tasked with making a collective decision are less enlightening than the actual tenor and evolution of the discussions as the debate progresses.
58. With the above in mind, it is evident that the debate progressed. After the Officer gave his oral report, the committee heard objections. Mr Mark Borthwick commented “I understand that you’ve been asked not to consider animal suffering in your deliberation, even though the suffering in this case will be monumental”. I note the phrasing is that members had been asked not told not to consider animal suffering.
59. Later towards the end of the discussions the chairperson, Councillor Pettigrew says:
- “We do seem to be, and I know it’s part of a lot of the concerns from residents and objectors on the welfare issue, but we are here today to talk about the planning considerations. I know it’s right to discuss the different welfare issues and the ecology is certainly a planning consideration, it absolutely is.”

60. It is notable that both Mr Shattock and Mr Parkinson both interpret those remarks as supportive of their contended for constructions. The comments could be taken either way, noting the welfare issues and saying “but we are here to talk about planning considerations” but then going on to say “I know it’s right to discuss the various welfare issues”.
61. The closing comments of the chairperson are somewhat ambiguous and represent the inner workings of the mind of one member. They do not represent a definitive understanding of the Officer’s advice in any event for those reasons and do not take the matter further.
62. For all of the above reasons I conclude that the challenge in ground 1 must fail. It is not therefore necessary for me to go on to consider the arguments under section 31 Senior Courts Act. I would ask Counsel to draw up an appropriate order to represent the terms of this judgment and I thank them all for their assistance in terms of both clear written and oral submissions.