

IN THE COURT OF APPEAL (CIVIL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 June 2018

Before:

Lord Justice Davis
Lord Justice Underhill
and
Lord Justice Lindblom

Between:

	R. (on the application of Oates)	<u>Claimant</u>
	- and -	
	Wealden District Council	<u>Defendant</u>
	- and -	
	Catesby Estates Ltd.	<u>Interested Party</u>

Ms Saira Kabir Sheikh Q.C. and Mr Hugh Flanagan (instructed by **Thomson Snell and Passmore LLP**) for the **Claimant**

Mr Richard Langham (instructed by **Sharpe Pritchard LLP**) for the **Defendant**
Mr Rupert Warren Q.C. (instructed by **Eversheds Sutherland (International) LLP**)
for the **Interested Party**

Hearing date: 7 March 2018

Judgment Lord Justice Lindblom:

Introduction

1. Was a local planning authority's decision to grant planning permission for a development of housing unlawful because it was made on a false understanding of regulation 123 of the Community Infrastructure Levy Regulations 2010 ("the CIL regulations")? That is the basic question in this claim for judicial review.
2. The claimant, Mrs Helen Oates, challenges the decision of the defendant, Wealden District Council, on 14 October 2016, to grant outline planning permission for a development of up to 390 dwellings at Brodricklands and Hamlands Farm, Willingdon, in East Sussex. The application site is about 32 hectares of farmland, to the north of the village of Lower Willingdon and to the south of the village of Polegate, outside the development boundaries of those two settlements, and not allocated for development in the development plan. It lies next to the administrative boundary between the district of Wealden and the borough of Eastbourne. The application for outline planning permission was made by the interested party, Catesby Estates Ltd., on 3 May 2016. All matters except for access were reserved for future determination. Access was proposed from St Martin's Road and Dutchells Way.
3. Mrs Oates' home is next to the site. She objected to Catesby Estates' proposal. Her claim for judicial review was issued on 25 November 2016. Permission was refused on the papers by Dove J. on 31 January 2017. The renewed application for permission was refused by H.H.J. Jarman Q.C., sitting as a deputy judge of the High Court, at a hearing on 8 March 2017. Mrs Oates sought permission to appeal against that decision. On 9 November 2017 I granted permission to apply for judicial review on a single ground, and ordered that the claim be retained for determination in this court – under CPR 52.15(3) and (4) (now CPR 52.8(5) and (6)).

The issue in the claim

4. The main issue in the claim, as the parties agree, is whether the advice given by the district council's Principal Planning Officer (Majors) to the Planning Committee South when it considered the proposal at its meeting on 13 October 2016 materially misled the members on the effect of regulation 123, and on the acceptability of the likely impact of traffic generated by the development on local junctions, invalidating the grant of planning permission.

The statutory regime for Community Infrastructure Levy ("CIL")

5. CIL is a standard charge imposed on development by a local planning authority. It is used to fund infrastructure – including roads – the need for which is created by development. The statutory scheme provides for a "charging authority" to approve a "charging schedule" for its area, setting the rates at which CIL is to be chargeable in respect of the cost of the infrastructure that is to be funded by CIL (see the first instance judgment in *R. (on the application of Fox Strategic Land and Property Ltd.) v Chorley Borough Council* [2014] J.P.L. 1152, at paragraphs 9 to 25). Section 205(2) of the Planning Act 2008 identifies the "overall purpose" of the statutory regime for CIL as being "to ensure that costs incurred in supporting the development of an area can be funded (wholly or partly) by owners or developers of land in a way that does not make development of the area economically unviable". Section 208(3) provides that "[a] person who assumes liability for CIL before the

commencement of development becomes liable when development is commenced in reliance on planning permission”. Under regulation 31(3) of the CIL regulations, liability to make CIL payments arises only when the chargeable development is commenced.

6. The relationship of the statutory arrangements for CIL to the statutory provisions for planning conditions under sections 70(1) and 72 of the Town and Country Planning Act 1990, for planning obligations under section 106 of the 1990 Act, and for highway agreements under section 278 of the Highways Act 1980, is dealt with in regulations 122 and 123 of the CIL regulations. Regulation 122 limits the use of planning obligations. It provides that “[a] planning obligation may only constitute a reason for granting planning permission for the development if the obligation” is “(a) necessary to make the development acceptable in planning terms”, and “(b) directly related to the development”, and “(c) fairly and reasonably related in scale and kind to the development” (paragraph (2)). As amended by the Community Infrastructure Levy (Amendment) Regulations 2014, regulation 123 provides:

“123. – Further limitations on use of planning obligations

- (1) This regulation applies where a relevant determination is made which results in planning permission being granted for development.
- (2) A planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure (including, subject to paragraph (2B), through requiring a highway agreement to be entered into).
- (2A) Subject to paragraph (2B) a condition falling within either of the following descriptions may not be imposed on the grant of planning permission –
 - (a) a condition that requires a highway agreement for the funding or provision of relevant infrastructure to be entered into;
 - (b) a condition that prevents or restricts the carrying out of development until a highway agreement for the funding or provision of relevant infrastructure has been entered into....
- (2B) Paragraphs (2) and (2A) do not apply in relation to highway agreements to be entered into with –
 - (a) the Minister, for the purposes of section 1(1) of the 1980 Act;
 - (b) Transport for London; or
 - (c) a strategic highways company for the time being appointed under Part 1 of the Infrastructure Act 2015.
- (3) Other than through requiring a highway agreement to be entered into, a planning obligation (“obligation A”) may not constitute a reason for granting planning permission to the extent that –
 - (a) obligation A provides for the funding or provision of an infrastructure project or provides for the funding or provision of a type of infrastructure; and
 - (b) five or more separate planning obligations that –

- (i) relate to planning permissions granted for development within the area of the charging authority; and
- (ii) which provide for the funding or provision of that project or provide for the funding or provision of that type of infrastructure,

have been entered into on or after 6th April 2010.

(4) In this regulation –

...

“funding” in relation to the funding of infrastructure, means the provision of that infrastructure by way of funding;

...

“relevant determination” means –

- (a) in relation to paragraph (2), a determination made on or after the date when the charging authority’s first charging schedule takes effect ...

... ; and

“relevant infrastructure” means –

- (a) where a charging authority has published on its website a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL ... , those infrastructure projects or those types of infrastructure;

...”.

Government policy

7. Paragraph 32 of the National Planning Policy Framework (“the NPPF”), in a section containing policies for “Promoting sustainable transport”, states:

“32. All developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment. Plans and decisions should take account of whether:

...

- improvements can be undertaken within the transport network that cost effectively limits the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

...”.

8. In the part of the NPPF devoted to “Plan-making”, under the heading “Ensuring viability and deliverability”, paragraphs 175 and 176 state:

“175. Where practical, [CIL] charges should be worked up and tested alongside the Local Plan. The [CIL] should support and incentivise new development, particularly by placing control over a meaningful proportion of the funds raised with the neighbourhoods where development takes place.

176. Where safeguards are necessary to make a particular development acceptable in planning terms (such as environmental mitigation or compensation), the

development should not be approved if the measures required cannot be secured through appropriate conditions or agreements. ...”.

9. In the part of the NPPF headed “Decision-taking”, under the sub-heading “Planning conditions and obligations”, paragraphs 203, 204 and 206 state:

“203. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

204. Planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

...

206. Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.”

Relevant advice on good practice is given in the Planning Practice Guidance.

The district council's CIL charging schedule

10. The district council adopted a CIL charging schedule in November 2015. Appendix A, the “Regulation 123 List”, refers to regulation 123 of the CIL regulations, which, it says “restricts the use of planning obligations for the provision of infrastructure that will be funded in whole or in part by the [CIL]”, and that the “[infrastructure] types or projects that are listed below will not be secured through planning obligations”. It explains that “[this] is to ensure there is no duplication between CIL and planning obligations secured through s106 agreements in funding the same infrastructure projects”. In Table 6, the list of “Infrastructure projects/types to be funded wholly or partly by CIL (by CIL Chargeable development)” includes “Improvements to release additional road capacity and road safety measures, including public transport provision in the Parishes of Hailsham, Hellingly, Polegate, Willingdon and Jevington and Westham, Uckfield and the Strategic Road Network”. In Table 7, the list of “Infrastructure projects/types to be funded through s106 contributions (by CIL chargeable development)”, includes “Improvements to release additional road capacity and road safety measures in all Parishes except Hailsham, Hellingly, Polegate, Willingdon and Jevington and Westham, Uckfield and within the Lewes District Council area and the Strategic Road Network”.

East Sussex County Council's responses to consultation on the proposal

11. When first consulted on Catesby Estates' proposal, East Sussex County Council, as highway authority, objected. In its response to consultation dated 24 June 2016, which had been prepared by its Director of Communities, Economy and Transport, it said:

"I recommend that consent be refused for the following reasons:

1. The identified improvements to mitigate the impact of the development on the highway network are required prior to development commencing in the area. The implementation and timing of the required improvements cannot be guaranteed. Without these improvements congestion on the main highway network will increase as will 'rat running' through adjacent residential streets all of which will introduce additional hazards on the highway. Additional delays will also affect the reliability of bus services.
2. The suggested improvements for junctions not included in the CIL schedule are not considered adequate to mitigate the impacts of the development on the highway leading to additional congestion."

Under the heading "Planning Status", it said:

"This site is not identified for development in the adopted Wealden Local Plan Through the development of the Wealden & Eastbourne Local Plans it was acknowledge[d] that highway capacity, particularly in the Willingdon/Polegate area was a barrier to further development without appropriate improvements to the highway network.

Through the transport studies carried out it was concluded that sufficient improvements could be made in the Polegate/Willingdon area to mitigate the impact of up to 700 houses in the area."

On "Transport Modelling", it said:

"Due to the size of the proposals the impact on the highway network has been assessed on both the local and strategic road network. In order to test this development it was agreed between the applicant and ESCC that the proposals should be tested through the existing [South Wealden and Eastbourne Transport Study ("SWETS")] transport model. This model includes all committed developments in the Wealden & Eastbourne Local Plans as well as expected background traffic growth up to 2027.

...".

Under the heading "Junction Assessments & Mitigation", it said:

"...
Traffic modelling clearly shows that currently expected or planned growth for the Polegate, Stone Cross, Willingdon and Eastbourne areas will significantly increase traffic pressures on the local and strategic road networks, particularly the following junctions close to the development:

- the A27, A22 and A2270 signalised junction;
- the A2270 and High Street signalised junction;
- the A22 and A27 Cophall Roundabout[.]

It is therefore considered that improvements at all these junctions must be delivered if future planned development is to occur without unacceptable movement and access conditions developing and planned bus service enhancements being undermined or threatened by existing strategic bottlenecks. Without improvements on the main roads, increased traffic flows would most likely lead to increased rat running on side roads in the area increasing hazards.

The Wealden Infrastructure Delivery Plan identifies these junction improvements to be essential to the delivery of the Wealden Core Strategy Local Plan. It is also mentioned that the works to the strategic road network are required before development commences on land at South Polegate and East of Willingdon.

It is noted that the applicant would be paying the appropriate CIL contribution towards infrastructure delivery. This does not however ensure that the required junction improvements will be delivered or within the timescale required before any development is occupied. It is further noted that for junctions under the control of Highways England funding is available from the £75m provided by central government for improvements. These are currently being considered but construction is not due to commence until 2020 with completion by 2022 based on the current programme.

The mitigation currently proposed also only takes account of the level of development considered through the Local Plan, i.e. 700 houses plus commercial development. Should this application be approved then additional mitigation would be required to allow for additional development in the area over and above the 700 dwelling ceiling or if further mitigation is not possible then the number of dwellings on the adjacent allocated site would need to be reduced accordingly to no more than 310 dwellings.

The results from the SWETS modelling carried out for the applicant give expected traffic flows. These have then been used to carry out individual junction analysis. This has demonstrated that a number of the junctions considered will operate over capacity while most will operate within capacity. Some of these junctions are those already identified as needing mitigation measures and are on the CIL list, others are not.

The junctions identified that are not currently within the CIL lists are:
 Willingdon Park Drive/Decoy Drive Crossroads
 Kings Drive/Decoy Drive Mini Roundabout
 A2270/Huggetts Land Traffic signal junction[.]

The applicant proposes to carry out alterations to the A2270/Huggetts Lane junction to improve capacity but does not propose any alterations at the remaining junctions. The Highway Authority considers that the development should mitigate the impacts it creates particularly at the Kings Drive/Decoy Drive mini roundabout. It is noted that there is concern about increased traffic in the vicinity of Hampden Park Level Crossing as this area suffers from significant congestion when the level crossing

gates are closed. It is therefore beyond the [applicant's] control to mitigate against this.”

The “Conclusion” was this:

“The Highway Authority recommend that this application be refused as the required mitigation will not be delivered in the timescales required but should the Planning Authority be minded to approve the application then we request that the conditions below are attached to any consent along with a [section] 106/278 agreement securing the following items:

- Design & Implementation of a Traffic Calming Scheme for Hazelwood Avenue
- Improvements to bus stops in Hazelwood Avenue in the form of high level kerbing, bus shelters, real time information signs and new flags/timetable posts.
- A Residential Travel Plan including an audit fee of £6000.

...”

12. A second consultation response, dated 24 August 2016 and again prepared by the Director of Communities, Economy and Transport, noted that “[the] response from the Highway Authority previously recommended refusal” for two reasons. But in quoting from the consultation response of 24 June 2016, it added this further sentence at the end of the first reason:

“... The totality of this unmitigated impact is considered to be severe as per paragraph 32 of the NPPF ...”

It continued:

“Following a meeting between the applicant, their agents and the County Council to discuss our concerns, a letter was sent in response on the 1st August. This outlined their view of the planning and highways context of the site in relation to the improvements outlined for the area, as well as more detailed information on the mitigation measures not included on the CIL list.

In essence the argument presented was that the primary reason for refusal was not considered valid as where highways infrastructure improvements are set out in a CIL list ... that infrastructure can only be provided through the payment of a CIL contribution. The timing of the delivery of the improvements is also not within the developer's control. A requirement that the improvements are delivered prior to development is therefore inconsistent with the items being on the CIL list. Therefore in paying the CIL contributions the developer is doing everything that can be asked of them in terms of mitigation for those items on the CIL list.

Legal advice on this matter has also been sought. It has been confirmed that the case set out by the applicant was sound and the reason for refusal initially recommended could not be sustained, as there is no legal mechanism for the developer to deal with the required mitigation measures previously identified, other than through paying the CIL charge.

The letter from the applicant also included more detailed consideration for the three junctions identified which sit outside of the CIL list at A2270/Huggetts Lane junction, Kings Drive/[/]Decoy Drive mini roundabout and the Willingdon Park Drive/Decoy Drive junction.

This confirmed that alterations to the Huggetts Lane junction can be made and the applicant is willing to fund/carry out these works as part of any consent. A contribution has been suggested to mitigate the additional impact at the Kings Drive/Decoy Drive mini roundabout which is acceptable. ...

Lastly, the Willingdon Park Drive/Decoy Drive [junction] was considered. ... On the basis that safe mitigation cannot be provided the applicant has instead suggested an enhanced travel demand strategy (e.g. extra bus vouchers for residents) which under the circumstances is acceptable.

On the basis of the above the level of mitigation for the junction [sic] not covered by CIL is acceptable.”

Much of the assessment that had appeared under the heading “Junction Assessments & Mitigation” in the previous response was presented in identical terms, but some of it was different. After the passage referring to the three junctions close to the site of the proposed development – “the A27, A22 signalised junction[,] the A2270 and High Street signalised junction ... [and] the A22 and A27 Cophall Roundabout” – for which “improvements ... must be delivered if future planned development is to occur without unacceptable movement and access conditions developing ...”, it stated:

“The Wealden Infrastructure Delivery Plan identifies these junction improvements to be essential to the delivery of the Wealden Core Strategy Local Plan[.] It is noted that the applicant would be paying the appropriate CIL contribution towards infrastructure delivery as discussed previously in these comments. It is also noted that for junctions under the control of Highways England funding is available from the £75m provided by central government for improvements. These are currently being considered but construction is not due to commence until 2020 with completion by 2022 based on the current programme.”

As for the “junctions ... that are not currently within the CIL lists” – the “Willingdon Park Drive/Decoy Drive Crossroads[, the] Kings Drive/Decoy Drive Mini Roundabout [and the] A2270/Huggetts Lane Traffic signal junction” – it said this:

“The proposed mitigation at these junctions has ... already been covered in these comments.”

And as for the “concern about increased traffic in the vicinity of Hampden Park Level Crossing”, it said:

“The applicant has recognised this as far as possible and will implement a travel demand strategy for the proposed development. ...”.

The “Conclusion” now was this:

“On the basis of the additional information provided and legal opinion, the original recommendation for refusal is withdrawn as with the main junction improvements being in the CIL list there is no legal mechanism to secure these works separately or control their timing. In paying the CIL charge the applicant is doing all they can be asked to do in this regard.

Further acceptable mitigation is also proposed for junctions not included in the CIL schedule.

The other items also considered at this stage such as access are acceptable as they meet the set national and local standards.

It is therefore considered that a severe cumulative impact will not be created on the highway network (with the appropriate mitigation) and as such the proposal is in accordance with the requirements of the National Planning Policy Guidance.

The Highway Authority request that the conditions below are attached to any consent along with a legal agreement to secure the following items:

...”.

Three further “items” were now added to the list in the previous response:

“

- Design & Implementation of improvements to the A2270/Huggets Lane junction
- A £10,000 contribution towards Traffic Regulation Orders.
- A £1,000 contribution towards mitigation at the Decoy Drive/Kings Drive mini roundabout.”

The district council's decision to grant planning permission

13. The application for planning permission first went before the district council's Planning Committee South at its meeting on 15 September 2016. The committee resolved to defer its consideration of the proposal until after it had undertaken a site visit. The site visit took place on 30 September 2016. The application came back before the committee at its meeting on 13 October 2016. At that meeting the committee received the advice of the Principal Planning Officer (Majors) in a lengthy report, in which she recommended that planning permission be granted, subject to a number of conditions. The committee accepted that recommendation, and planning permission was duly granted.

14. In the “Executive Summary” of her report the officer said:

“...

The site is contrary to Saved Policies GD2 and DC17 of the adopted Wealden Local Plan 1998, by virtue of its location outside the development boundary as set out on the proposals map of that plan.

... It is considered that the lack of a 5-year housing land supply and the provision of housing to meet local needs, both in terms of market and affordable provision is a significant and important consideration in the scheme's favour and therefore is given significant weight.

...

... Having regard to Paragraph 32 of the NPPF, the likely residual cumulative impact of development is not considered to be 'severe', and therefore there are no reasons in transport terms to justify a refusal. CIL contributions from the proposed development can be utilised for improvements within Wealden District Council's Charging Area and those improvements directly related to the access provision have been conditioned. ...

Concerns about impacts on existing infrastructure and services are not considered to weigh against the proposal. The development will be liable to CIL payments which will provide significant revenue to the Council's revolving infrastructure fund that can then be utilised to assist in providing additional services for the area, with the improvements to the A27 being identified as a priority in the Council's Regulation 123 List.

To conclude, the development accords with the relevant planning Policies in the adopted development plan with the exception of the two Policies GD2 and DC17, which for the reasons set out in the main report, are given very limited weight.

Subject to conditions it is recommended that full planning permission is GRANTED."

15. The officer recorded the responses to consultation of statutory bodies and local residents, including the first and second responses of the county council as highway authority, which she quoted in full. Highways England had "concluded that they have no objections ([in] the understanding that the appropriate contribution is provided to Wealden, in line with the Council[s] Regulation 123 which states that CIL contributions received within the District will be used, inter alia, to fund wholly or partly: "Improvements to release additional road capacity and road safety measures, including public transport provision ... and the Strategic Road Network" ...)". The objection of Eastbourne Borough Council was also referred to, including its Planning Committee's "severe concerns over the local highway network and whether it would cope". The officer commented on those concerns, reminding the committee that "ESCC Highways and Highways England have raised no objections to the robustness of the Transport Assessment or the assumptions and modelling underpinning the assessment".
16. In section 4 of her report, "Details of Case", the officer set out her assessment of the proposal on its planning merits. One of the "main issues" she identified was "(e) The effect of the proposed additional traffic generated on the free flow of traffic and conditions in relation to the safety of highway users" (paragraph 4.5.1).
17. In subsection 4.16, "Traffic Impact and Access", she considered the likely effects of traffic generated by the development on the local road network. She referred to the Polegate Movement and Access Strategy of November 2013, which had "highlighted that the A2270

running into Eastbourne is very heavily congested and the junction of the A27, A22 and A2270 remains busy”. She said that development in Polegate, Stone Cross and Willingdon, and further afield in Eastbourne, Hailsham and Hellingly “will place increasing demands on the strategic road network”. She then mentioned six junctions where “[traffic] modelling shows that currently expected or planned growth for the Polegate, Stone Cross and Willingdon area will significantly increase traffic pressures on the local and strategic road networks ...” (the second paragraph 4.16.11). She identified improvements that had been designed in outline for three of those junctions that were “of particular relevance to the consideration of the ... application”. These were the “[signalisation] scheme for the A22 and A27 Cophall Roundabout (Highways England trunk road junction)”, the “[extra] lanes and increased flaring for the A27, A22 and A2270 signalised T Junction (Highways England trunk road junction)”, and the “[extra] lanes and left filter lanes for the A2270, High Street and Wannock Lane signalised crossroads (ESCC junction)” (the second paragraph 4.6.12). She then said (in paragraph 4.16.13):

“4.16.13 The Council’s Infrastructure Delivery Plan identifies these three junctions as key junction improvements that are essential to the Wealden Core Strategy Plan. Delivery of the improvements however is dependent on the timing of development coming forward in terms of need and funding.”

18. The officer acknowledged the “fundamental principle” in paragraph 7.2 of the core strategy that “development that generates a need for infrastructure or enhancements to existing infrastructure will only be permitted if the necessary infrastructure to support it is either already in place, or there is a reliable mechanism to ensure that it will be provided at the right time, when it is needed” – a principle “embodied” in Policy WCS7 of the core strategy (paragraph 4.16.14).
19. She said that the three junctions to which she had referred had “already been earmarked for future improvement works by East Sussex County Council and Highways England, and are set out in the Wealden District Council Infrastructure Delivery Plan (IDP), with Community Infrastructure Levy funding (plus other funding sources, ... including contributions from the Non Statutory Local Plan Sites towards trunk road junctions)”. She pointed out that “[the] IDP refers to delivery of these junction improvements in and around 2016 and 2017”, but that it was “recognised that delivery of the identified improvement schemes would be dependent on development related CIL receipts” (paragraph 4.16.15).
20. She continued (in paragraph 4.16.16):

“4.16.16 The applicant would be paying the appropriate CIL contribution towards infrastructure delivery. It is acknowledged that this does not necessarily ensure that the required junction improvements will be delivered within the timescale required before any development is occupied, which was a concern originally raised by ESCC Highways in their first consultation response when they objected to the application on this basis. The timing of the delivery of the improvements however is not within the developer’s control. A requirement that the highway improvements are delivered prior to development is inconsistent with the highways improvements being on the CIL list. In paying the CIL contributions the developer is doing everything that can be asked of them in terms of mitigation for those items on the CIL list. County have subsequently withdrawn their objections,

following legal advice that this was not a sustainable reason for refusal. Notwithstanding the above, the Council has been clear that the provision of improvements to the A27 is of strategic importance and would be a priority for CIL spends. Furthermore, Highways England who controls two of these junctions has raised no objection as the development will be CIL liable.”

21. She went on to refer to the funding that was in place for various highway improvements in the area and the likely funding arrangements for them and timescale for their delivery. The South East Local Enterprise Partnership had “agreed funding of £4m from its Growth Fund towards key Highway improvements in the Polegate area, including improvements to the A27/A22 junctions”. There were, in addition, “over £2.2m contributions agreed through Section 106 towards Trunk Road Improvements”, and “over 400k agreed for [Local Sustainable Accessibility Improvement Contributions] improvements in the area” (paragraph 4.6.17). The junctions under the control of Highways England were due for “completion by 2022 based on the current programme” (paragraph 4.16.18). Under the Department for Transport’s Road Investment Strategy for 2015/16 to 2019/20, “£75 [million] has ... been allocated towards local access and safety improvements along the A27 between Polegate and Lewes”. The officer referred to current discussions between the Department for Transport, Highways England, the county council and “the A27 Reference Group” about “longer term improvements to the A27 and associated junctions ...” (paragraph 4.16.19).

22. She concluded (in paragraph 4.16.20):

“4.16.20 In the event that this application was approved, and having regard to the timescales associated with the preparation and submission of a reserved matters application(s) and discharge of conditions combined with the lead in time for on-site preparations and construction, it is considered that first occupations would be unlikely for at least three years. Based on a delivery rate of 75 dwellings per annum for the application site the impact from the development would be incremental taking over 5 years for the application site to be built out and occupied which would be after the anticipated date for the Highways England works to the trunk roads to have been completed. It is noted that the submitted Economics Benefits Statement refers to a 48 month construction period, which seems ambitious compared to the historic build out trends associated with new development to date in the district, however based on this timescale and again allowing for the remaining consents process, even then the development would only be completed by 2022. The Core Strategy shows indicative delivery of the Mornings Mill site between 2019 and 2027. It is however noted that in the Council’s recent five year land supply assessment (March 2016) the delivery of housing from the Mornings Mill Farm has not been included within the five year period to 2021. Whilst the Mornings Mill site may start delivering housing earlier, the cumulative impact of completed dwellings with the application site is still likely to be less than the 700 units allocated in the Core Strategy by 2022.”

23. She then referred to the three “remaining junctions identified as being affected” – the “Willingdon Park Drive/Decoy Drive Crossroads”, the “Kings Drive/Decoy Drive Mini Roundabout” and the “A2270/Huggetts Lane Traffic signal junction” (paragraph 4.16.21). She told the committee that “[the] applicant proposes to carry out alterations to the A2270/Huggetts Lane junction to improve capacity and mitigate potential impacts of the proposed

development to achieve a nil detriment situation by increasing the existing two lane flare by 15m from 25m to 40m” (paragraph 4.16.22). She went on to say (in paragraph 4.16.23):

“4.16.23 The CIL Regulations place restrictions on the use of planning obligations and conditions where a local authority has an infrastructure list. Planning obligations and conditions should not be used to require a developer to enter into agreements to provide items that appear on the charging authority’s Regulation 123 list. The Council’s Regulation 123 states that CIL contributions received within the District will be used, inter alia, to fund wholly or partly: *“Improvements to release additional road capacity and road safety measures, including public transport provision in the Parishes of Hailsham, Hellingly, Polegate, Willingdon and Jevington and Westham, Uckfield and the Strategic Road Network”*[.] In this context, having regard to Regulation 123, the Council could not utilise [section] 106 contributions to make additional provision for improvements to Huggetts Lane as this would be called ‘double dipping’. This junction and any necessary improvements would be covered by the payment of CIL from the development.”

24. Turning to the other two junctions, the officer reminded the committee that they both “sit within the administrative boundary of Eastbourne Borough Council and are not covered by Wealden’s CIL as they do not sit within the Council’s charging area” (paragraph 4.16.24). She said that “[the] Highway Authority has ... confirmed that mitigation improvements are not required to the Willingdon/Decoy Drive priority crossroads but that minor improvements are required to Kings Drive/Decoy Drive mini roundabout as a result of the development”. She acknowledged that “[the] applicants [had] suggested a proportionate financial contribution for the costs of these minor works, equating to a total sum of £1,000, which would nullify the impact of the development proposals”. But she concluded that, “[having] regard to the conclusion that this minor mitigation would not change capacity, ... these works are not necessary to make the development acceptable in planning terms” (paragraph 4.16.25).
25. She dealt next with several other matters that did not, in her view, justify refusing planning permission – including “concerns about increased traffic in the vicinity of Hampden Park Level Crossing” (paragraph 4.16.27).
26. She came then to government policy in paragraph 32 of the NPPF. She quoted the policy (paragraph 4.16.29), and the corresponding guidance in the Planning Practice Guidance (paragraph 4.16.30). She then gave the committee this advice (in paragraph 4.16.31):

“4.16.31 With reference to paragraph 32 of [the NPPF], the Transport Assessment considers that the likely residual cumulative impact of development is not considered to be ‘severe’, and therefore concludes that there are no reasons in transport terms to justify a refusal. [Officers] concur with this conclusion and where improvements are required CIL contributions from the proposed development can be utilised for improvements within Wealden District Council’s Charging Area and those improvements directly related to the access provision have been conditioned[.]”

27. Finally in this subsection of her report, the officer said (in paragraph 4.16.32):

“4.16.32 East Sussex County Council in their second consultation confirm that “[...] *a severe cumulative impact will not be created on the highway network (with the*

appropriate mitigation) and as such the proposal is in accordance with the requirements of the National Planning Policy Guidance”.

28. In subsection 4.25, “Sustainability”, she said that “[satisfactory] highway access can be achieved without detriment to highway safety ...”, and that “[the] development is liable to the CIL levy which will be used to fund the necessary infrastructure improvements”.
29. In section 5, “Conclusion”, where she brought together the main conclusions in her planning assessment, the officer repeated the advice she had already given (in paragraph 4.16.31), that “[with] reference to paragraph 32 of [the NPPF], the likely residual cumulative impact of development is not considered to be ‘severe’, and therefore there are no reasons in transport terms to justify a refusal” (paragraph 5.1.7).
30. Transcripts of the committee meetings that took place on 15 September 2016 and 13 October 2016 are before us. They record the representations made to the committee, including those made on behalf of Catesby Estates, and by objectors – including Mrs Oates, the planning officers’ oral advice, the observations made on behalf of the county council as highway authority, and the members’ discussion of the planning merits of the proposed development, which included consideration of the likely effects of traffic from the development on the road network, and the funding and provision of the relevant junction improvements.
31. The minutes of the October 2016 committee meeting record the committee’s resolution that outline planning permission was to be granted, subject to conditions. Explaining that decision, the minutes state:

“... [It] is concluded that any considerations that weigh against the development collectively do not significantly and demonstrably outweigh those matters that are in its favour, namely the delivery of housing, for the reasons that are set out in detail in the main body of the report. ... With reference to paragraph 32 of [the NPPF], the likely residual cumulative impact of development is not considered to be ‘severe’, and therefore there are no reasons in transport terms to justify a refusal. ...”

and

“... ESCC Highways and Highways England have raised no objections to the robustness of the Transport Assessment or the assumptions and modelling underpinning the assessment.
...”

Did the district council err in law?

32. For Mrs Oates, Ms Saira Kabir Sheikh Q.C. submitted that the advice given by the officer in her report to committee – which was informed by the county council’s second consultation response as highway authority, withdrawing its objection to the proposed development – was based on a misunderstanding of regulation 123 of the CIL regulations. Where development will cause harm, and that harm cannot be mitigated or mitigated soon enough, a refusal of planning permission will, in principle, be justified. The limitation created by regulation 123(2) is that a planning obligation cannot be a reason for granting permission to the extent

that it provides for the funding or provision of an infrastructure project or type of infrastructure that is on the CIL list. It does not follow, however, that where an infrastructure project is to be funded through CIL, harm that would arise before that infrastructure is provided cannot be a reason for refusing permission. In such a case, the refusal of planning permission, or the imposition of a condition on a grant of permission to prevent the development coming forward or being occupied until the necessary infrastructure improvements have been carried out, may be the only sensible course for the local planning authority to take. It is inherent in the plan-led system, and also in the regime for CIL, that where a developer proposes speculative development on an unallocated site, before necessary infrastructure has been provided, he risks a refusal of planning permission.

33. Ms Sheikh submitted that if the county council had not changed its position and had maintained its objection, the district council's committee would likely have resolved that planning permission should be refused. The county council had been misled into changing its position. The advice it had been given, causing it to resile from its view that the traffic impact of the proposed development would be "severe", was that, as a matter of law, the harm that was eventually going to be mitigated by CIL-funded infrastructure could not found an objection.
34. That advice, Ms Sheikh submitted, was misconceived. The same misconception found its way into the officer's report to the district council's committee – in particular, paragraph 4.16.16. On one of the main issues the committee had to consider, the advice given to the members was "significantly" or "materially" misleading. And it was not corrected at the committee meeting. In support of this argument Ms Sheikh pointed to several passages in the transcripts of both committee meetings, which, she said, demonstrate that the committee was being firmly advised that "the developer" could not be obliged to provide the CIL-funded junction improvements. The members did not get as far as considering the imposition of a condition to restrain the implementation or occupation of the development until after the necessary improvements to junctions had been undertaken, because they were being told, in effect, that there was no valid objection here, that they were not free to exercise their own planning judgment, and that they could not refuse planning permission for reasons relating to traffic impact. That was wrong. At no stage did the officer reject the county council's stance as mistaken. She should have done – bearing in mind how significant it is likely to be in a local planning authority's determination of an application for planning permission that the proposed development is not objected to by the highway authority (see, for example, the judgment of Collins J. in *R. (on the application of Weir) v London Borough of Camden* [2005] EWHC 1875 (Admin), at paragraphs 13 and 14). As is clear from what she said in paragraph 4.16.31 of her report, where she referred to the "residual" cumulative impact, and paragraph 4.16.32, where she repeated the county council's conclusion that there would not be a "severe" impact on the highway network "with the appropriate mitigation", she failed to consider whether the effects of the traffic generated by the development would be acceptable in the absence of the necessary junction improvements.
35. For the district council, Mr Richard Langham defended the officer's advice as correct and lawful. What she said in paragraph 4.16.16 of her report was right. Planning conditions should not be imposed whose effect would be to compromise the principle, enshrined in the statutory regime for CIL, that liability for the payment of CIL is triggered only when development is begun (section 208(3) of the 2008 Act). Conditions preventing development being begun until a section 278 agreement has been entered into for the provision of

infrastructure are unlawful (under section 123(2A)(b) of the CIL regulations). And it will often be unrealistic – in this case it plainly was – to expect infrastructure necessary to make development acceptable to be provided before the CIL that is to fund it has been collected. Mr Langham submitted that this was, in effect, what the officer was saying in paragraph 4.16.16.

36. On behalf of Catesby Estates, Mr Rupert Warren Q.C. submitted that the officer's advice, taken as a whole, was not such as to mislead the members in any significant way. She was entitled to conclude, as she did in paragraphs 4.16.31 and 5.1.7 of her report, that "the likely residual cumulative impact" of the proposed development would not be "severe" – the relevant question under the policy in paragraph 32 of the NPPF – and that there were "no reasons in transport terms to justify a refusal" of planning permission. This conclusion was a matter of planning judgment for her, and, on her advice, the members. It was not irrational. Nor was it undermined by what she said in the fourth sentence of paragraph 4.16.16 – that "[a] requirement that the highway improvements are delivered prior to development is inconsistent with the highways improvements being on the CIL list", or by the observations to similar effect in the county council's second consultation response. Even if that was an infelicity, Mr Warren submitted, it was not to say, or to imply, that it would necessarily be unlawful to impose a negative, or *Grampian*, condition preventing occupation of the development until highway improvements had been carried out.
37. But in any event, Mr Warren submitted, the officer's advice in the following paragraphs – in particular, paragraph 4.16.20 – was to the effect that, if planning permission were to be granted now, no such condition would be necessary. It is inherent in the regime for CIL, he said, that delays will sometimes occur between the grant of planning permission and the provision of infrastructure that is being funded by CIL. Here, however, there was no real risk of the proposed development, together with other development, generating more traffic than could be satisfactorily accommodated on the highway before the CIL-funded junction improvements had been undertaken, and that none of the junction improvements to which she referred needed to be made the subject of a *Grampian* condition. Her own conclusion, in paragraph 4.16.31, was that the impact on the highway, taking into account all the junction improvements she mentioned – especially their funding and the likely timing of their provision – was not going to be "severe". That conclusion was unimpeachable. Though it coincided with the county council's position as highway authority, and with that of Highways England, it was reached on the basis of the officer's own, independent assessment. Her advice to the committee was not misleading, let alone misleading in any material way.
38. I cannot accept Ms Sheikh's argument. There are, I think, two difficulties with it. The first is that it attributes to the officer's comments in the first part of paragraph 4.16.16 of her report, and, in particular, in the fourth sentence of that paragraph, a significance they do not truly have in her assessment of the proposal on its merits. It reads too much into those comments. And secondly, it misreads the officer's conclusions and advice in paragraphs 4.16.17 to 4.16.32 and 5.1.7, as accepting the inevitability of traffic generated by the proposed development having unacceptable effects on the highway until or unless junction improvements had been completed, when in fact she was saying no such thing.
39. The approach the court will take when considering a challenge to a grant of planning permission in which criticism is made of a planning officer's report to committee is well established. Minor or inconsequential errors are to be distinguished from advice that is "significantly or seriously misleading – misleading in a material way ...". And "unless there

is some distinct and material defect in the officer's advice, the court will not interfere" (see the judgments recently given in this court in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314 – in particular, at paragraphs 42 and 63).

40. Applying that approach here, I do not think it leads to the conclusion that the officer's relevant advice, read fairly as a whole, was flawed in such a way as to invalidate the district council's grant of planning permission. There is undoubtedly some force in Ms Sheikh's criticism of what the officer said in paragraph 4.16.16 of her report. It seems to me that what the officer said in the fourth and fifth sentences of that paragraph can fairly be criticized as failing to explain the true scope of regulation 123 of the CIL regulations. I would also accept that this deficiency in the officer's advice stemmed from the county council's second consultation response, which was seemingly based on inaccurate or inadequate legal advice – though, to be fair, we have not seen that legal advice. And it seems clear that the county council's decision to withdraw its objection was influenced by that legal advice. Indeed, this was the officer's own understanding of what had happened, as one can see from the sixth sentence of paragraph 4.16.16. All of this I accept. But I do not accept that the officer's advice on traffic impact, taken in its entirety, was materially misleading, and the decision made in the light of it unlawful. This case shows how important it is to read the relevant parts of an officer's report to committee fully and fairly, and to recognize the distinction between such advice, as the product of the officer's own planning judgment, and views expressed by consultees.
41. If, in the first part of paragraph 4.16.16, the officer was seeking to convey to the members the full and precise effect of regulations 31, 122 and 123, I do not think she succeeded in doing so. She was right to acknowledge that the payment of the CIL contribution towards the delivery of infrastructure would "not necessarily ensure that the required junction improvements will be delivered within the timescale required before any development is occupied ...". And she was right to say that the timing of the delivery of the required junction improvements was "not within the developer's control". The next two sentences – where she said that "[a] requirement that the highway improvements are delivered prior to development is inconsistent with the highways improvements being on the CIL list", and that "[in] paying the CIL contributions the developer is doing everything that can be asked of them in terms of mitigation for those items on the CIL list" – are consistent with observations made by the county council in its second consultation response. The officer would have done better if she simply said that, under regulation 123(2), a planning obligation committing the developer to fund or provide such junction improvements could not, in the circumstances, be a reason for granting planning permission, and that, under regulation 123(2A), a condition could not be imposed to require a section 278 highway agreement for their funding or provision, or to prevent the development being carried out until such an agreement had been entered into.
42. Regulations 122(2) and 123(2) prescribe circumstances in which planning obligations made under section 106 of the 1990 Act may or may not "constitute a reason for granting planning permission ...". Regulation 123(2A) identifies certain kinds of restriction that may not be imposed on a grant of planning permission by way of conditions. These provisions operate as adjustments to the statutory scheme where it allows and requires local planning authorities, when determining applications for planning permission, to have regard to planning obligations as material considerations, and where it provides the power to impose planning conditions. They do not, of course, compel a local planning authority to grant planning permission for a proposed development if, for whatever reason, that development is

unacceptable in planning terms, or if it cannot be made acceptable either by a planning obligation, or by the imposition of conditions. They do not preclude planning permission being refused if, for example, the local planning authority considers that the local road network will not be able to cope satisfactorily with the traffic generated by the proposed development. Nor do they preclude planning permission being granted subject to a lawful condition specifically preventing the occupation of the development until necessary infrastructure, such as the improvement of a particular road junction, has been provided, even if that is “not within the power of the applicant ...” (see the speech of Lord Keith of Kinkel in *Grampian Regional Council v City of Aberdeen District Council* [1984] 47 P. & C.R. 633, at pp.636 and 637, and his speech in *British Railways Board v Secretary of State for the Environment* [1993] 3 P.L.R. 125, at p.134).

43. In my view, however, the decisive question here is not whether the advice the officer gave in the first part of paragraph 4.16.16 of her report was deficient, but whether that deficiency, such as it was, went to the substance of her own assessment of the acceptability of the proposed development in highway terms. Did it impair her consideration of the likely effects of traffic generated by the development? In my view it did not. The shortcomings in her advice in the first part of paragraph 4.16.16, were, as Mr Langham and Mr Warren submitted, overridden by her assessment and advice in the following paragraphs.
44. It is true that the officer did not explicitly advise the committee that it was open to the district council to refuse planning permission if, in its view, the likely effects of traffic from the development on the capacity and safety of the highway were unacceptable. Nor, however, did she give the opposite advice: that, in the circumstances, the district council could not lawfully refuse planning permission if that were so.
45. But it is also clear that she did not automatically and unquestioningly adopt the county council’s position in its second consultation response – though she ultimately agreed with the county council’s view that a refusal of planning permission on highway grounds could not be justified. The advice she gave was based on her own exercise of planning judgment.
46. At no stage – either in the written advice in her report or in the course of discussion at the two committee meetings – did she tell the members that if they, as decision-maker, considered the development to be unacceptable in highway terms, they would nevertheless have to put their own planning judgment into suspense and resolve that planning permission be granted. If that had been her view, she could have said so. And there would then have been no point in her going on, as she did, to consider whether the traffic impact of the development would, in fact, be unacceptable.
47. The officer’s approach, it seems to me, was pragmatic and realistic. Her starting point, the basic assumption in her assessment, was that developers could not be required to provide highway improvements that were going to be funded by CIL – however desirable that might be. It was on this basis that she assessed the acceptability of the likely impact of traffic from this proposed development. She said nothing about the possibility of a lawful *Grampian* condition being imposed to ensure that the development would not be adding to the traffic on the local and wider road network until specified junction improvements had been undertaken – most obviously, perhaps, by specifically preventing the new dwellings from being occupied until those junction improvements were in place. Logically, however, no such advice was called for if, in view of the likely sequence of events to which she referred in paragraph

4.16.20, there was no need for such a condition to be imposed – because unacceptable effects on the highway were going to be avoided in any event. If, on the other hand, she had thought that the effects would be unacceptable, and that a lawful *Grampian* condition could not be imposed to avoid them, her advice would have been quite different. I cannot accept that she was effectively telling the committee that in the circumstances, as a consequence of the legislative scheme for CIL, the district council had no choice but to grant planning permission, and without a *Grampian* condition. That is not what she said, and I do not think one can sensibly read it into the advice she actually gave.

48. Throughout her assessment the officer concentrated on the likely funding and, crucially, the likely timing of improvements to junctions on the local road network, especially the junctions on the A27, A22 and A2270. She emphasized the considerable progress that had already been made with the funding of those improvements. But the main theme in her assessment, on which her conclusions and advice were based, was the probable timing of the works involved in the junction improvements and of the implementation of Catesby Estates' proposed development and other development in the area, including development on the allocated site at Mornings Mill.
49. The second part of paragraph 4.16.16, beginning with the words "Notwithstanding the above", moves away from the county council's position in its second consultation response and on to the officer's own, independent assessment. Her use of that phrase – "Notwithstanding the above, ..." – indicates that she was not simply taking the county council's withdrawal of its objection as conclusive. She was going on now to consider whether the development was acceptable notwithstanding the fact that "[the] timing of the delivery of the [required junction] improvements is not within the developer's control". Her focus here was the "strategic importance" of providing the improvements to the A27 as a "priority for CIL spends". In the following three paragraphs – paragraphs 4.16.17 to 4.16.19 – she considered the timing and funding of the works. Then in paragraph 4.16.20 she considered the likely timescale for the construction of the development itself, and the development on the Mornings Mill Farm site.
50. There is no criticism of the officer's conclusions in paragraphs 4.16.17 to 4.16.20. Nor could there be. These were all reasonable conclusions, well within the scope of a lawful exercise of planning judgment.
51. The gist of the officer's advice in paragraph 4.16.20 of her report was that, given the likely timing of implementation, the required junction improvements were likely to have been carried out by the time Catesby Estates' development had been completed in 2022, and before the development on the Mornings Mill site, together with Catesby Estates', was likely to be producing a greater "cumulative [traffic] impact" in that year than had been contemplated by the council in allocating "700 units" in the core strategy. That is the clear conclusion in the final sentence of paragraph 4.16.20. And it is the salient conclusion in the officer's assessment. It enabled her to advise the committee, as she went on in paragraph 4.16.31 to do, that the "likely residual cumulative impact" was not actually going to be "severe". Put simply, the cumulative effect of traffic from this proposed development and traffic from development on the allocated site was not, in fact, going to exceed the impact anticipated in the development plan before the CIL-funded junction improvements were in place. It would not, therefore, be an unacceptable impact. This was a perfectly rational and understandable conclusion. It is not weakened by any of the comments the officer had made in the first part

of paragraph 4.16.16, or by anything the county council had said in its response to consultation. It was her own view of the reality of the situation on the ground. This was her conclusion, in the light of her own knowledge and consideration of the likely pace at which housing development would be delivered in the district council's area and the likely timescale for the provision of CIL-funded infrastructure. In this important respect her advice to the committee differed from the county council's responses to consultation, which did not grapple in the same way with the likely relative timing of development and highway improvements.

52. The officer's subsequent advice, in paragraphs 4.16.21 to 4.16.25, which addressed the other three local junctions that would be affected by traffic from the development, were again the product of her own evaluation. She acknowledged Catesby Estates' proposal to undertake alterations to the A2270/Huggetts Lane junction (paragraph 4.16.22). She was also clearly conscious of the potential mischief here of duplication – "double dipping", as she called it – in conflict with regulation 123, in securing those minor improvements to the junction (paragraph 4.16.23). Once again, however, she clearly saw no need for a lawful *Grampian* condition to be imposed to prevent the proposed development being implemented and occupied before those minor improvements had been carried out. As for the other two junctions, she accepted the county council's view that there was no need for "mitigation improvements" at the Willingdon Park Drive/Decoy Drive crossroads, but, contrary to the county council's view, she did not accept that a financial contribution for "minor improvements" at the Kings Drive/Decoy Drive mini-roundabout was necessary. Her conclusion was that "this minor mitigation" was "not necessary to make the development acceptable in planning terms" (paragraph 4.16.25). These were all entirely lawful conclusions as a matter of planning judgment. No complaint is made about them, or could be. The same may also be said of the officer's conclusions in paragraphs 4.16.26 to 4.16.28.
53. Thus the officer found herself able to conclude, in applying the policy in paragraph 32 of the NPPF, that "the likely residual cumulative impact" of the proposed development would not be "severe", and that there were "no reasons in transport terms to justify a refusal" of planning permission. This had been the conclusion of the Transport Assessment. It was a conclusion with which the officer agreed, as was made clear to the committee, on the basis that CIL contributions could be used for the necessary improvements to the highway (paragraph 4.6.31). And it re-appeared in section 5 of her report, the "Conclusion" (in paragraph 5.1.7). Once again, this was the officer's own view as a matter of planning judgment. And once again, the planning judgment is unassailable.
54. If the officer's conclusions in paragraphs 4.16.20 to 4.16.31 were right – which, of course, is not a question for the court – not only would there have been no justification for refusing planning permission for Catesby Estates' development because of any concern over the capacity and safety of the highway, but there was also no need for a lawful *Grampian* condition to restrain its implementation, or to prevent occupation of a particular number of dwellings, until specified junction improvements were complete. This, it seems to me, is the critical point. And it is a point that Ms Sheikh's argument does not overcome.
55. I do not think this analysis is undone by the fact that in paragraph 4.16.32 of her report the officer referred to the "Conclusion" in the county council's second consultation response. She did not quote the relevant sentence in full. She omitted the words with which it begins: "It is therefore considered ...". Those words seem to connect the conclusion that "a severe

cumulative impact will not be created on the highway network (with the appropriate mitigation) ...”, at least in part, to what was said at the beginning of the “Conclusion” – that “... with the main junction improvements being in the CIL list there is no legal mechanism to secure these works separately or control their timing” and that “[in] paying the CIL charge the applicant is doing all they can be asked to do in this regard”. If that is what the county council meant, it seems illogical and incorrect. The severity or lack of severity of any potential effects of additional traffic on the capacity of the highway would not, in principle, depend on developers “doing all they can be asked to do ...” under the CIL regulations. It would depend on whether any necessary junction improvements were going to be in place in time – which is the question that the officer tackled in her assessment and advice to the committee.

56. If, however, the county council really had been of the view that, despite the funding of the junction improvements on the A27, A22 and A2270 through CIL contributions, the proposed development would in fact be unacceptable, or ought only to be approved if an appropriate and lawful *Grampian* condition could be imposed to prevent unacceptable effects on the highway, it would surely have said so. I cannot accept that it withdrew its objection to the proposal because it believed it was unable to oppose unacceptable development in a case where the necessary highway improvements were going to be funded by CIL. I do not think that is realistic. But in any event, as I have said, the officer’s own assessment was sound in itself, and not undermined by the inaccurate or inadequate legal advice on which the county council seems to have relied.
57. I would therefore dismiss the claim for judicial review.

Lord Justice Underhill

58. I agree.

Lord Justice Davis

59. The County Council, as highway authority, and an important statutory consultee, originally had forcefully objected to the proposal on highway grounds, its objections being set out in some detail. Subsequently, however, it withdrew those objections: it did so essentially in reliance on (seemingly mistaken) legal advice which it had received as to the impact of the CIL Regulations.
60. In my view, the key question in this claim for judicial review is whether the otherwise very clear and thorough report of the planning officer sufficed on this highway/infrastructure issue. May the Committee wrongly have been led to believe that all highway objections of the kind originally raised had in effect been withdrawn and no longer presented a valid concern? Or was the Committee sufficiently made aware that it could properly still be assessed that there continued to be highway/infrastructure concerns and, if so, that those concerns could be addressed by outright refusal or by the imposition of an appropriate *Grampian* condition?
61. I have found this matter very close to the line: primarily because of the wording of paragraph 4.16.16 (read with paragraph 4.16.32) of the planning officer’s report.

62. However, as the respondents submitted, the report has to be read as a whole. It is also not to be read in an overly legalistic way by means of a process of meticulous linguistic parsing. On balance, I am persuaded that, in this respect, the report (read as a whole) did sufficiently present the issue to the committee and I am persuaded that there was no material defect in this regard. In particular, I accept that the planning officer was entitled to hold and express her own conclusions on this highway/infrastructure issue as a matter of planning judgment in the way – taken overall – that she did.
63. In the result, I agree that the claim for judicial review should be dismissed for the reasons given by Lindblom LJ in his judgment.