Neutral Citation Number: [2021] EWHC 3408 (Admin)

Case No: CO/1138/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 December 2021

Before :

MRS JUSTICE LANG DBE

- -

Between :

THE QUEEN	**Claimant**
on the application of	
WHITE WALTHAM AIRFIELD LIMITED	
- and -	
ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD	**Defendant**
SORBON ESTATES LIMITED	**Interested Party**

- -
- -

John Steel QC and Victoria Hutton (instructed by **Richard Buxton Solicitors**) for the **Claimant**
Charles Streeten (instructed by **Legal Solutions**) for the **Defendant**
Sasha White QC and Matthew Henderson (instructed by **BDB Pitmans LLP**) for the **Interested Party**

Hearing date: 30 November 2021

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Approved Judgment

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Mrs Justice Lang :

1. The Claimant seeks a judicial review of the decision of the Royal Borough of Windsor and Maidenhead ("the Council") to grant planning permission to the Interested Party ("IP") for the erection of up to 79 dwellings and a nursery building at Grove Park Industrial Estate, Waltham Road, White Waltham ("the Site") on 15 February 2021.

2. The Claimant is the owner and operator of the White Waltham Airfield ("the Airfield") which is adjacent to the Site.

3. On 21 July 2021, permission to apply for judicial review was granted on the papers by Timothy Mould QC, sitting as a Deputy High Court Judge. In his observations, he said that the Claimant's grounds, as summarised below, were arguable.

Grounds of challenge

4. The Claimant's grounds of challenge are as follows:

5. **Ground 1:** The Council failed to take into account of, and reach a decision on, the issues raised by the Claimant regarding deficiencies in the noise assessment, which were material considerations. In the alternative, the conclusion in the Officer's Report ("OR") that the noise survey results were robust was irrational, and inadequate reasons were given for the conclusion.

6. **Ground 2:** Contrary to guidance set out in the Planning Practice Guidance ("PPG"), in failing to recognise the limitations of the noise assessment, the Council failed to take into account all the activities which the Airfield is permitted to carry out, as opposed to only the activities which were occurring on two days in September 2016 when the assessment took place.

7. **Ground 3:** The Council applied 66dB LAeq (16 HOURS) as a threshold above which there would be an amenity impact from the Airfield without considering the qualitative impacts together with the noise threshold of 55dB LAeq (16 HOURS), as set out in up-to-date guidance and policy and as used in the IP's own noise assessment. The lower threshold was clearly material.

8. The Claimant expressly stated at the hearing that the challenge only related to the external noise impact on prospective residents, for example, when sitting in their gardens. The Claimant accepted that condition 23 to the permission, which required acoustic insulation, would reduce the internal noise impact to an acceptable level, and therefore it would not give rise to a risk of restrictions being imposed on the use of the Airfield.

Facts

9. The Airfield is a general aviation grass aerodrome which has been in existence since 1935 and was used during World War II. It is not subject to any planning conditions or controls. The Airfield is subject to a licence issued by the Civil Aviation Authority which does not limit the intensiveness of the use. It is licensed for night flying

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(paragraph 6). There are three runways which can be used in either direction, depending upon the prevailing wind.

10. On 16 November 2016, the IP applied for outline planning permission for the proposed development, with access, layout and scale to be decided at outline stage, and all other matters to be reserved. It subsequently submitted a "Noise Assessment" ("the NA"), prepared by Acoustic Air Limited, dated May 2017.

11. At paragraph 1.1, the NA identified the activities at the Airfield as one of the principal sources of noise affecting the site. Other sources of noise were identified, namely, traffic noise and noise from other commercial activities.

12. In section 2, headed "Noise Criteria", the NA referred to number of different publications regarding the assessment of noise impact, in force in 2017. These included: (1) at paragraphs 2.4-2.9, the 2012 edition of the National Planning Policy Framework ("NPPF 2012"); (2) at paragraph 2.10, the PPG; (3) at paragraphs. 2.11-2.13, British Standard BS8233:2014 – Guidance on sound insulation and noise reduction for buildings ("the BS"); (4) at paragraphs 2.14-19, various guidelines promulgated by the World Health Organisation ("WHO"); and (5) at paragraphs 2.20-2.28, various documents specific to road traffic or industrial noise.

13. Paragraph 2.10, which referred to the PPG, set out the Noise Exposure Hierarchy which applies rankings of the levels of observed adverse effect, ranging from none to low to significant. These concepts were introduced into government guidance by the Noise Policy Statement (March 2010), issued by DEFRA, and the Explanatory Note stated that they were in use by the WHO. They have since been adopted and developed in the PPG.

14. In regard to the BS, the NA stated:

> "2.11 For steady external noise sources, BS8233:2014 states that it is generally desirable that the internal ambient noise level does not exceed the guideline values in Table 2.2.
>
> …..
>
> 2.12 For traditional external areas that are used for amenity space, such as gardens and patios, the BS says it is desirable that "the external noise does not exceed 50 dB LAeq,T, with an upper guideline value of 55dB LAeq,T."
>
> 2.13 However, due to the nationwide difficulty in satisfying an external noise criterion of 55 dB LAeq,T in urban areas where transportation noise is prevalent, the BS provides an over-arching consideration of how to treat outdoor garden areas in the following way:
>
> > "… it is also recognized that these guideline values are not achievable in all circumstances where development might be desirable. In higher noise areas, such as city centres or urban areas adjoining the strategic transport network, a

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> compromise between elevated noise levels and other factors, such as the convenience of living in these locations or making efficient use of land resources to ensure development needs can be met, might be warranted. In such a situation, development should be designed to achieve the lowest practicable levels in these external amenity spaces, but should not be prohibited.
>
> Other locations, such as balconies, roof gardens and terraces, are also important in residential buildings where normal external amenity space might be limited or not available, i.e. in flats, apartment blocks, etc. In these locations, specification of noise limits is not necessarily appropriate. Small balconies may be included for uses such as drying washing or growing pot plants, and noise limits should not be necessary for these uses.""

15. In regard to the WHO Guidelines, the NA stated:

> "2.14 The noise guidance from the World Health Organisation (Community Noise, WHO Vol. 2, Issue 1, 1995, and Guidelines for Community Noise, 2000) is that in order to avoid sleep disturbance the period noise level (LAeq) should not exceed 30 dB internally and individual noise events should not normally exceed 45 dB LAmax. To preserve speech intelligibility during the daytime and evening, the recommended internal noise level for living rooms is 35 dB LAeq,T. These LAeq values are consistent with the latest guidance of BS8233.
>
> 2.15 The WHO noise criteria for dwellings are summarised in Table 2.3 together with the desirable noise levels for outdoor living areas, which are likewise equal to those referenced in BS8233.
>
> Table 2.3: WHO Guideline Noise Levels for Dwellings

Location	**Critical Health Effect(s)**	**L_{Aeq} dB**	**Time base**	**L_{Amax} fast dB**
Outdoor living area	Serious annoyance, daytime and evening	55	16 hours	-
	Moderate intelligibility & moderate annoyance, daytime & evening	50	16 hours	-
Dwelling, indoors	Speech intelligibility & moderate annoyance, daytime & evening	35	16 hours	
Inside bedrooms	Sleep disturbance, night-time	30	8 hours	45

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Outside bedrooms	Sleep disturbance, window open (outdoor values)	45	8 hours	60

16. The NA detailed the assessment undertaken in section 3. The dates of the noise monitoring were incorrectly recorded in the report (though not in the data in Appendix 1). It took place on 14 and 15 September 2016, not 12 and 13 September 2016. On one of the days in the monitoring period (Wednesday 14 September 2016), the runway closest to the Site (runway 21) was in operation, contrary to the Claimant's assertion in its objections. Runway 03 was not in operation. The data shows regular loud noise events on the afternoon of 14 September 2016, reaching a maximum (LAMax) of 84.6, as against an average of 62.4. The data also shows noise continuing into the evening and night (including for example a recording of 81.2 at 22.44 hours).

17. At paragraph 3.1, the NA explained that continuous noise monitoring was undertaken at a number of locations, including at 1m from the boundary between the Site and the Airfield (Position 1).

18. Table 3.1 of the NA set out the noise levels measured at Position 1 and this was summarised at paragraph 3.6: "The day and night-time LAeq monitored at Position 1 was 54 dB and 39 dB respectively, with a night-time LAmax of 67 dB (rounding to the nearest whole number for assessment purposes)." Measurements were also taken at other positions.

19. The NA undertook a noise impact assessment in section 4 and materially stated at paragraphs 4.2 – 4.22:

> "4.2 None of the noise levels [affecting the site] are considered to be high, and they were all lower than levels that are commonly encountered at approved developments adjacent to transportation routes and existing urban developments. Consequently, acceptable noise standards will be readily achieved using practicable forms of noise mitigation as discussed below.
>
> …..
>
> 4.4 External and internal noise levels for new dwellings along the site boundary, i.e. at the north adjacent to the airfield, to the south near the road and with a buffer zone of approximately 50m to Waltham Road, as shown on the Illustrative Site Layout Plan (Figure 2), and to the east adjacent to remaining commercial uses, would be as shown in Tables 4.1, 4.2 and 4.3. The Tables also show the outdoor-to indoor level difference (LA) that windows to habitable rooms must provide in order to achieve BS8233's noise limits, e.g. an internal noise level of 35 dB LAeq during the day for living rooms and 30 dB LAeq during the night for bedrooms. The window's required sound reduction index (R) can be calculated….
>
> …..

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> 4.7 For new dwellings facing the Airfield, Table 4.1 shows that in order to achieve BS8233's internal LAeq and LAmax noise levels, windows facing the Airfield will need to provide a minimum sound reduction (RTRA) of no more than 18 dB RTRA. Normal thermal double glazing having a configuration of 4/12/4 or 4/16/4, where the information is presented in terms of the thickness of one pane of glass in mm, followed by the size of the air gap, followed by the thickness of the second pane of glass, typically provides a sound reduction of 25 dB RTRA as indicated by the data in Appendix III, which would be more than sufficient to enable all internal noise standards to be met.
>
> …..
>
> 4.9 Adjacent to the Airfield, gardens used for amenity purposes would have an unscreened outdoor noise level of approximately 54 dB, which would satisfy the BSS8233/WHO outdoor criterion of 55 dB. Therefore, any site layout can be adopted adjacent to the Airfield without the outdoor noise criterion being exceeded.
>
> …..
>
> 4.22 The noise assessment demonstrates that acceptable external and internal noise levels will be readily achieved for residents without recourse to significant noise mitigation, consequently this [is a] matter that can be dealt with by way of planning conditions […] With relevant noise standards met, the proposed development would satisfy the requirements of the NPPF."

20. The NA reached the following material conclusions at paragraphs 5.1 – 5.12:

> "5.3 The BS8233/WHO outdoor noise criterion 55 dB LAeq would be met at all locations across the site. Therefore, any site layout can be adopted without the outdoor noise criterion being exceeded.
>
> 5.4 For new dwellings facing the airfield, windows will need to provide a minimum sound reduction (RTRA) of no more than 18 dB RTRA in order to achieve BS8233's internal LAeq and LAmax noise levels. Normal thermal double glazing having a configuration of 4/12/4 or 4/16/4, where the information is presented in terms of the thickness of one page of glass in mm, followed by the size of the air gap, followed by the thickness of the second pane of glass, typically provides a sound reduction of 25 dB RTRA, which would be more than sufficient to enable all internal noise standards to be met …
>
> …..

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> 5.12 The noise assessment demonstrates that acceptable external and internal noise levels will be readily achieved for residents without recourse to significant noise mitigation, consequently this matter can be dealt with by way of planning conditions. For example, conditions can require a scheme for protecting the proposed residential development from noise to be submitted and approved by the local planning authority, and for all works that form part of the scheme to be completed before any part of the development is occupied. If required, specific noise standards to be achieved inside dwellings can be specified within a planning condition, and these would be attained by way of appropriate window designs. With relevant noise standards met, the proposed development would satisfy the requirements of the NPPF."

21. The Claimant objected to the application on three occasions. The first letter of objection, dated 16 December 2018, stated *inter alia*:

> "The proposed layout has houses and gardens backing onto Shottesbrooke Farm and White Waltham Airfield. Due to the noise of aircraft starting up, carrying out power checks, taxying and taking-off from the adjacent runway (03), the area to the North of Grove Park would be much more suited to remain for the development of office buildings where the noise has less effect and there is a reduced usage during weekends when there may be a higher number of aircraft movements. During the summer months the Airfield is busier and the proximity of Aircraft will have a serious detrimental effect on the amenity of these proposed houses…."

22. The second letter of objection, dated 8 August 2019, set out paragraphs 104f and 182 of the 2019 edition of the National Planning Policy Framework ("NPPF 2019") which stated, *inter alia*:

> "…. The Grove Park site is the old RAF site and used to be within the Airfield boundary. The result is that it is very close to the hangars where the aircraft are still stored. The airfield still houses and uses some of the same noisy aircraft that there were used for training during WW11. Grove Park is also very close to the end of runway 21 and although aircraft using that runway do not actually fly over the proposed site they will be at approx. an altitude of 200 – 300 ft and a horizontal gap of approx. 100m. The noise footprint of the aircraft enlarges as the altitude of the aircraft increases. There are also aircraft starting up and conducting engine power checks on the threshold of runway 03 (reciprocal end of runway 21). All of these events can be very noisy depending on the type of aircraft….on the 12th and 13th of September 2016 when the noise survey referred to in the application was carried out, the runway in use was Runway 25 not Runway 21 which would have a much higher noise implication.

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> Currently Grove Park is occupied by businesses ….. WWAL is predominantly a leisure facility which is at its busiest during a weekend during the summer when the days are longer and the weather is more conducive to flying. Changing a current office into a residential home will mean the houses will suffer from a great deal of noise, especially when the wind is from the Southwest which is the predominant wind direction in the UK. At the moment no one in Grove Park is affected by the noise and there are no complaints.
>
> The proposal clearly makes no attempt to mitigate the situation. The layout shows houses much closer to the airfield than the existing office layout. Residents sitting outside will have to put up with engine noise from aircraft both on the ground and in the air. This will inevitably result in a number of complaints from the residents. We already receive complaints from occupants of houses built very recently, who feel that the circuit traffic from White Waltham Airfield is too noisy. These complainants are often very aggressive, over bearing and will ring up 10 times in one morning and shout down the phone. The complainants are usually in new houses on sites not previously used for residential occupation e.g. stables used for an equestrian business or buildings used for a mushroom farm. This is a very serious situation for us, flying is our business and we should not be forced to suffer for someone else's financial gain with no mitigation whatsoever….."

23. The third letter of objection, dated 7 December 2020, followed the resolution to approve the application. It further highlighted the problem of conflict between the Airfield and new residents of the proposal. It stated: "[B]y allowing and encouraging this to happen you are now putting White Waltham Airfield into direct conflict with yet more unsuspecting house owners."

24. On 21 December 2018, a consultation response was provided by the Council's environmental health team. The Environmental Protection Officer ("EPO") did not oppose the proposal, but recommended the following condition:

> "**EH07 Aircraft noise**
>
> No development shall take place until details of the measures to be taken to acoustically insulate all habitable rooms of the development against aircraft noise, together with details of measures to provide ventilation to habitable rooms, have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be carried out and completed before the development is first occupied for residential purposes and retained.
>
> Reason: To ensure an acceptable living environment for future occupiers"

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25. The Planning Officer prepared the OR for the meeting of the Council's Planning Committee on 18 November 2020[1].

26. The OR summarised the overall assessment of the application as follows:

> "1.2 The proposal would result in the loss of employment use, including small to medium size units. However, the principle of redeveloping the site for housing is in accordance with Hurley and Walthams Neighbourhood Plan Policy WW1. In accordance with National Planning Policy Guidance, the most recent plan policy takes precedence in decision making therefore the support for housing development is given greater weight then the loss of employment opportunities for the purposes of this application. There would be no loss of community facilities with the re-provision of the D1 nursery use within the site.
>
> 1.3 The proposal is considered to represent appropriate development in the Green Belt as the redevelopment of previously developed land which does not have a greater impact on the openness of the Green Belt than the existing. The proposal is considered acceptable in relation to efficient use of land, housing mix, affordable housing, open space, local character including the setting of St Mary's Church and Bury Court Conservation Area, residential amenity for future occupants and neighbouring amenity, highway safety and impact on local highway infrastructure, archaeology, sustainable drainage and ecology.
>
> 1.4 With reference to paragraph 11 of the National Planning Policy Framework the 'tilted balance' is engaged. This means planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole. There would be some harm to the trees within the site which should be afforded moderate weight against the development in the planning balance. However, weighing in favour the proposal would contribute towards meeting the need for housing within the Borough, which should be given great weight. On this basis, the benefits of the proposal would demonstrably outweigh the harm."

27. The results of the consultations were set out in section 8 of the OR. The Claimant's concerns about noise from the Airfield were summarised as follows:

[1] There was a typographical error in paragraph 1.1 of the OR, as "layout" was mistakenly referred to as a reserved matter, as well as a matter to be dealt with at outline stage.

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> "Noise sensitive development next to airfield and working yard would be prejudicial to the operation of existing airfield/business; harm to amenity for future residents.
>
> Noise Survey under-represents actual noise and there are higher noise implications."

28. It was also recorded that the EPO did not object to the proposal, but recommended a condition requiring acoustic insultation against aircraft noise.

29. The OR addressed residential amenity, including noise, in section 9(vii), at paragraphs 9.47 – 9.52:

> "9.47 HWNP policy Env1 requires development to not give rise to harmful disturbance from noise. As a material consideration, paragraph 127(f) of the NPPF states that decisions should ensure that development achieves a high standard of amenity for existing and future users.
>
> …..
>
> 9.49 Concerns have been raised by Carters Yard, on which there is noise generating activity, about the residential development, which is noise sensitive, and potential limitations put on Carters Yard if there are subsequent complaints from future occupants. For dwellings, 8S8233: 2014 advises that outdoor living noise levels should not exceed 55dBLAmax and for indoor sleeping noise levels should not exceed 30dB ….
>
> 9.50 In relation to noise from White Waltham Airfield, which lies to the north, Local Plan Policy NAP2 states that new development will not be permitted in areas suffering from daytime aircraft noise levels of over 66dB LAeq (16 hours) and night time noise levels over 57dBLAeq (8 hours). From the noise survey, the Noise Assessment confirms that gardens adjacent to the airfield would have an unscreened outdoor noise levels of approximately 54db and so the proposal would be acceptable in this respect.
>
> …..
>
> 9.52 The methodology for the conduct of the noise survey is considered to be acceptable, and therefore the results are considered to be robust."

30. At its meeting on 18 November 2020, the Planning Committee voted unanimously in favour of the grant of planning permission, subject to conditions, including condition 23 which provides:

> "No development shall take place until details of the measures to be taken to acoustically insulate all habitable rooms of the development against noise from Carters Yard and aircrafts,

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> together with details of measures to provide ventilation to habitable rooms, have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be carried out and completed before the development is first occupied for residential purposes and retained.
>
> Reason: To ensure an acceptable living environment for future occupiers."

31. The grant of planning permission was issued on 15 February 2021.

Relevant policy and guidance

32. Policy NAP2 of the adopted local plan (2003) provides that new housing development will not be permitted in areas suffering daytime aircraft noise levels over LAeq (16 hours) 66dB and night time noise levels over LAeq (8 hours) 57dB.

33. Paragraph 180 of NPPF 2019, which was in force at the date of the decision, provides:

> "180. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:
>
> (a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life."

34. Paragraph 182 of NPPF 2019 re-states the "agent of change principle". Its focus is on the impact of the residents/users of new development complaining about pre-existing noisy uses and thereby restricting those uses in the future. It provides:

> "182. Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed."

35. NPPF 2019 supports the maintenance of general aviation airfields, stating at paragraph 104f, that planning policies should:

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> "recognise the importance of maintaining a national network of general aviation airfields, and their need to adapt and change over time – taking into account their economic value in serving business, leisure, training and emergency service needs, and the Government's General Aviation Strategy."

36. The PPG provides guidance as to how noise impact is to be assessed. It stresses the need to consider predicted qualitative impacts and does not set noise limits which indicate that development should be approved or refused (see Reference ID: 30-003-20190722; Reference ID: 30-004-20190722).

37. The PPG advises that there are three observed effect levels:

> "Significant observed adverse effect level: This is the level of noise exposure above which significant adverse effects on health and quality of life occur.' ('SOAEL')
>
> 'Lowest observed adverse effect level: this is the level of noise exposure above which adverse effects on health and quality of life can be detected.' ('LOAEL')
>
> No observed effect level: this is the level of noise exposure below which no effect at all on health or quality of life can be detected ('NOAEL')
>
> (Paragraph: 004 Reference ID: 30-004-20190722)."

38. The noise exposure hierarchy table (paragraph 30-005-20190722) advises that SOAEL should be avoided and LOAEL should be mitigated and reduced to a minimum.

39. The PPG advises that: "In some circumstances adverse effects are defined in terms of a combination of more than one factor such as noise exposure, the number of occurrences of the noise in a given time period, the duration of the noise and the time of day the noise occurs…'' (Ref ID: 30-004-20190722).

40. The PPG advises that: "where external amenity spaces are an intrinsic part of the overall design, the acoustic environment of those spaces should be considered so that they can be enjoyed as intended." (Ref ID: 30-006-20190722).

41. The PPG provides that though it is open to Local Plans to include noise standards "[C]are should be taken however, to avoid these being applied as rigid thresholds, as specific circumstances may justify some variation being allowed." (Paragraph: 007 Ref ID: 30-007-20190722).

42. At Paragraph: 015 Ref ID: 30-015-20190722 the PPG sets out a number of documents which assist with the management of noise. This includes the Aviation Policy Framework ("APF") and BS. It does not include the "Survey of noise attitudes 2014: Aircraft" document relied upon by the IP.

43. The APF also emphasises the need to consider factors other than noise contours when assessing noise impact from airports and the likelihood of complaints. At 3.19 and

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footnote 96, it encourages that other measures are also used, including consideration of frequency and pattern of movements and highest noise levels which can be expected.

44. With regards to the agent of change principle, the PPG explicitly provides that new development may need to put suitable mitigation measures in place to avoid pre-existing businesses having a significant effect on residents (Ref ID: 30-009-20190722). It also makes clear that the developer (or agent of change) will need to take account of both current activities and also "those activities that businesses or other facilities are permitted to carry out, even if they are not occurring at the time of the application".

45. The PPG gives guidance with regards to the impact of aviation activities on new development, stating:

> "The need for and type of mitigation will depend on a variety of factors including the nature of the aviation activity, location and normal environmental conditions in that context. Local planning authorities could consider the use of planning conditions or obligations to require the provision of appropriate mitigation measures in the new development." (Ref ID: 30-012-20190722).

46. The PPG makes clear that mitigation which may need to be provided by the agent of change includes avoiding noisy locations and also "layout" (Ref: 30-10-20190722).

Legal framework

Judicial review

47. In a claim for judicial review, the Claimant must establish a public law error on the part of the decision-maker. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26. A legal challenge is not an opportunity for a review of the planning merits: *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC 74 (Admin).

The development plan and material considerations

48. Section 70(2) of the Town and Country Planning Act 1990 ("TCPA 1990") provides that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act ("PCPA 2004") provides:

> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise."

49. In *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, [1997] 1 WLR 1447, Lord Clyde explained the effect of this provision, beginning at 1458B:

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"Section 18A [the parallel provision in Scotland] has introduced a priority to be given to the development plan in the determination of planning matters….

By virtue of section 18A the development plan is no longer simply one of the material considerations. Its provisions, provided that they are relevant to the particular application, are to govern the decision unless there are material considerations which indicate that in the particular case the provisions of the plan should not be followed. If it is thought to be useful to talk of presumptions in this field, it can be said that there is now a presumption that the development plan is to govern the decision on an application for planning permission….. By virtue of section 18A if the application accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the application does not accord with the development plan it will be refused unless there are material considerations indicating that it should be granted….

Moreover the section has not touched the well-established distinction in principle between those matters which are properly within the jurisdiction of the decision-maker and those matters in which the court can properly intervene. It has introduced a requirement with which the decision-maker must comply, namely the recognition of the priority to be given to the development plan. It has thus introduced a potential ground on which the decision-maker could be faulted were he to fail to give effect to that requirement. But beyond that it still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision-maker. It is for him to assess the relative weight to be given to all the material considerations. It is for him to decide what weight is to be given to the development plan, recognising the priority to be given to it. As Glidewell L.J. observed in *Loup v. Secretary of State for the Environment (1995) 71 P. & C.R. 175*, 186:

> "What section 54A does not do is to tell the decision-maker what weight to accord either to the development plan or to other material considerations."

Those matters are left to the decision-maker to determine in the light of the whole material before him both in the factual circumstances and in any guidance in policy which is relevant to the particular issues.

…..

In the practical application of section 18A it will obviously be necessary for the decision-maker to consider the development

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> plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether in light of the whole plan the proposal does or does not accord with it. He will also have to identify all the other material considerations which are relevant to the application and to which he should have regard. He will then have to note which of them support the application and which of them do not, and he will have to assess the weight to be given to all of these considerations. He will have to decide whether there are considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given to it. And having weighed these considerations and determined these matters he will require to form his opinion on the disposal of the application. If he fails to take account of some material consideration or takes account of some consideration which is irrelevant to the application his decision will be open to challenge. But the assessment of the considerations can only be challenged on the ground that it is irrational or perverse."

50. This statement of the law was approved by the Supreme Court in *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13, [2012] PTSR 983, per Lord Reed at [17].

51. The requirement to take into account material considerations was recently reviewed by the Supreme Court in *R (Friends of the Earth Ltd & Ors) v Heathrow Airport Ltd* [2020] UKSC 52, in the judgment of the Court delivered jointly by Lord Hodge and Lord Sales, at 116 – 120.

Planning officers' reports

52. The principles to be applied when considering a challenge to a planning officer's report were summarised by the Court of Appeal in *R (Mansell) v Tonbridge & Malling BC* [2019] PTSR 1452, per Lindblom LJ, at [42]:

> "42. The principles on which the court will act when criticism is made of a planning officer's report to committee are well settled. To summarise the law as it stands:
>
> > (1) The essential principles are as stated by the Court of Appeal in *R. v Selby District Council, ex parte Oxton Farms* [1997] E.G.C.S. 60 (see, in particular, the judgment of Judge L.J., as he then was). They have since been confirmed several times by this court,

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notably by Sullivan L.J. in *R. (on the application of Siraj) v Kirklees Metropolitan Borough Council* [2010] EWCA Civ 1286, at paragraph 19, and applied in many cases at first instance (see, for example, the judgment of Hickinbottom J., as he then was, in *R. (on the application of Zurich Assurance Ltd., t/a Threadneedle Property Investments) v North Lincolnshire Council* [2012] EWHC 3708 (Admin), at paragraph 15).

(2) 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 County Council* [2011] UKSC 2, at paragraph 36, and the judgment of Sullivan J., as he then was, in *R. v Mendip District Council, ex parte Fabre* (2000) 80 P. & C.R. 500, at p.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 L.J. in *Palmer v Herefordshire Council* [2016] EWCA Civ 1061, at paragraph 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.

(3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R. (on the application of Loader) v Rother District Council* [2016] EWCA Civ 795), or has plainly misdirected

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> the members as to the meaning of a relevant policy (see, for example, *Watermead Parish Council v Aylesbury Vale District Council* [2017] EWCA Civ 152). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example, *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427). But unless there is some distinct and material defect in the officer's advice, the court will not interfere."

53. The level of detail to be expected in officer reports was considered by Sullivan J. *in R v Mendip DC ex parte Fabre* [2017] PTSR 1112, at 1120B:

> "Whilst planning officers' reports should not be equated with inspectors' decision letters, it is well established that, in construing the latter, it has to be remembered that they are addressed to the parties who will be well aware of the issues that have been raised in the appeal. They are thus addressed to a knowledgeable readership and the adequacy of their reasoning must be considered against that background. That approach applies with particular force to a planning officer's report to a committee. Its purpose is not to decide the issue, but to inform the members of the relevant considerations relating to the application. It is not addressed to the world at large but to council members who, by virtue of that membership, may be expected to have substantial local and background knowledge. There would be no point in a planning officer's report setting out in great detail background material, for example, in respect of local topography, development planning policies or matters of planning history if the members were only too familiar with that material. Part of a planning officer's expert function in reporting to the committee must be to make an assessment of how much information needs to be included in his or her report in order to avoid burdening a busy committee with excessive and unnecessary detail."

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Further inquiries

54. In *R (Hayes) v Wychavon DC* [2019] PTSR 1163, I set out the principles which apply to a challenge based upon a failure to make sufficient inquiries, at [29] - [31]:

> "29. The Claimant correctly submitted that a planning authority (acting through its planning officer) is under a duty to take all reasonable steps to acquaint itself with the information relevant to the decision in order to be able to arrive at the correct decision, citing *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1997] AC 1014 and *R v*

Secretary of State for the Home Department ex p Iyadurai [1998] Imm AR 470, per Lord Woolf MR at 475. As a general principle, that is uncontroversial, but plainly the scope and content of the duty will vary according to the context.

30. Where a public body has to conduct an inquiry, pursuant to statutory powers and duties, it is entitled to decide upon the extent of the inquiry, subject only to the supervisory jurisdiction of the court. The principles were helpfully explained by Laws LJ in *R (Khatun) v London Borough of Newham* [2004] EWCA Civ 55 [2005] QB 37, at [35]:

> ".. it is for the decision-maker and not the court, subject again to Wednesbury review, to decide upon the manner and intensity of inquiry to be undertaken into any relevant factor accepted or demonstrated as such. This view is I think supported by the judgment of Schiemann J in R v Nottingham City Council, Ex p Costello (1989) 21 HLR 301, to which Mr Luba referred us. That case concerned the degree of inquiry which an authority was obliged to undertake into issues of priority need and intentional homelessness. Schiemann J said, at p 309:
>
> > "In my view the court should establish what material was before the authority and should only strike down a decision by the authority not to make further inquiries if no reasonable council possessed of that material could suppose that the inquiries they had made were sufficient."
>
> This approach is lent authoritative support by the decision of this court in R v Kensington and Chelsea Royal London Borough Council, Ex p Bayani (1990) 22 HLR 406, which was concerned with the authority's duty of inquiry in a homelessness case. Neill LJ said, at p 415:
>
> > "The court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable housing authority could have been satisfied on the basis of the inquiries made."

31. In my judgment, similar principles apply where a planning authority conducts an inquiry into a planning application within the statutory framework of the TCPA 1990 and the relevant national and local planning policies. Where it is alleged that the planning authority failed in its duty to make sufficient inquiry, the question to be asked is whether the inquiry made by the planning authority was so inadequate that no reasonable planning authority could suppose that it had sufficient material

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available upon which to make its decision to grant planning permission and impose conditions."

Ground 1

55. Under Ground 1, the Claimant contended that:

i) The Council failed to take into account and reach a decision on the issues raised by the Claimant as regards deficiencies in the noise assessment which were material considerations. Further, it was a material error of law for the OR not to report the Claimant's detailed objections to the Planning Committee.

ii) Alternatively, the conclusion in the OR that the noise survey results were robust was irrational. Further information should have been sought on the issues identified by the Claimant.

iii) Inadequate reasons were given for the Council's conclusions, and the Claimant was prejudiced by not understanding the basis for the decisions made.

56. Under sub-ground (ii) above, the Claimant submitted that the conclusion that the NA was robust was irrational because:

i) the noise assessment failed to consider whether the days on which it purportedly assessed noise from the airfield were representative of the use of the airfield; for example, there was no assessment of the numbers or types of aircraft, the runways in use, the areas of the airfield being used, the intensity of use or comparative impact on other days and times of the day or year;

ii) the noise assessment contained *prima facie* contradictions as to the dates on which the survey was undertaken; the runway or runways in use on the day or days when the measurements were taken was a crucial factor in determining whether the impact of aircraft noise at the airfield on the new development and in particular on planned external amenity spaces to houses adjacent to the airfield was representative;

iii) the noise assessment failed to interrogate or set out the extent of the permitted use at the airfield;

iv) the noise assessment failed to record aircraft and runway activity at the airfield during the days on which the noise impact was assessed; these were crucial factors and in the absence of any such information it was impossible to know whether the measurements were representative or represented a worst-case;

v) the Council was on notice that the days on which the noise assessment had taken place were when the Airfield use was light and there was no evidence to contradict that of the Claimant.

57. Alternatively, the Claimant submitted that it was irrational not to have sought further information on the above matters in order to assess the weight to be given to the report and its conclusions.

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Conclusions

58. I accept the Defendant's submission that the Claimant's objections were clearly referenced in Section 8 of the OR, as follows:

> "Noise sensitive development next to airfield and working yard would be prejudicial to the operation of existing airfield/business; harm to amenity for future residents.
>
> Noise Survey under-represents actual noise and there are higher noise implications."

59. This was a pithy but accurate summary, which I consider was adequate for its purpose. The letters of objection were all available for Members of the Planning Committee to read in full, if they wished to do so. In any event, Members were expressly advised by the planning officer at their meeting that the Claimant had made objections in relation to noise potential among other issues. I also note that, at the meeting of the Planning Committee, Councillor Knowles and Councillor Bowden both displayed detailed knowledge of the Airfield and the Site.

60. The Claimant made a number of criticisms of the NA. In my view, they did not come close to establishing that it was irrational for the planning officer to find that the methodology of the NA was acceptable and that the results were robust. Contrary to the Claimant's letter of objection dated 8 August 2019, the NA did include an assessment on a day when runway 21 was in use. This is the runway closest to the Site which the Claimant said would have a "higher noise implication". On the second day of the assessment, other runways were in use, but not runway 03. It was apparent from the data gathered that there were continuous levels of noise, and some short episodes of intense noise, both during the day and at night. It was mid-September, and the weather was fine and suitable for flying. Although there was an error in recording the dates of the assessment in the report, the dates in Appendix II (the data record) were correct. In any event, the error did not undermine the methodology.

61. No technical or scientific flaw in the methodology of the NA has been identified. Furthermore, there was a thorough consideration of the relevant guidance, which was properly applied to the data obtained. The Claimant has referred to its own knowledge of the different activities which take place at the Airfield at different times, but obviously this information was not available to the IP's consultants. In those circumstances, it was reasonable to undertake a continuous assessment over two days, as this was likely to be reasonably representative.

62. The Claimant's objections to the Council were couched in general terms, unsupported by any data. It chose not to commission its own noise assessment to demonstrate its assertion that the NA was unrepresentative. Of course it was not required to do so, but that meant that the NA was the only technical assessment available to the Council when it made its decision.

63. It was a matter for the Council to decide whether it needed any further inquiries or assessments to be conducted, in the light of the Claimant's objections. The Court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have

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been satisfied on the basis of the information before it (see *R (Hayes) v Wychavon DC* [2019] PTSR 1163 at [29] - [31]). In my judgment, that high threshold has not been reached in this case.

64. The OR addressed residential amenity, including noise, in section 9(vii), at paragraphs 9.47 – 9.52:

> "9.47 HWNP policy Env1 requires development to not give rise to harmful disturbance from noise. As a material consideration, paragraph 127(f) of the NPPF states that decisions should ensure that development achieves a high standard of amenity for existing and future users.
>
> …..
>
> 9.49 Concerns have been raised by Carters Yard, on which there is noise generating activity, about the residential development, which is noise sensitive, and potential limitations put on Carters Yard if there are subsequent complaints from future occupants. For dwellings, 8S8233: 2014 advises that outdoor living noise levels should not exceed 55dBLAmax and for indoor sleeping noise levels should not exceed 30dB ….
>
> 9.50 In relation to noise from White Waltham Airfield, which lies to the north, Local Plan Policy NAP2 states that new development will not be permitted in areas suffering from daytime aircraft noise levels of over 66dB LAeq (16 hours) and night time noise levels over 57dBLAeq (8 hours). From the noise survey, the Noise Assessment confirms that gardens adjacent to the airfield would have an unscreened outdoor noise levels of approximately 54db and so the proposal would be acceptable in this respect.
>
> …..
>
> 9.52 The methodology for the conduct of the noise survey is considered to be acceptable, and therefore the results are considered to be robust."

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65. The planning officer also recommended that the issue of internal noise should be addressed by condition 23, which required the IP to acoustically insulate all habitable rooms, to ensure an acceptable living environment for future occupiers.

66. In my view, these were planning judgments, which the planning officer was entitled to reach on the material before her. This Court ought not to interfere with her exercise of judgment. The planning officer had regard to the Claimant's objections, but it is plain from the OR that she accepted the analysis and conclusions in the NA, which she was entitled to do. This was confirmed at the meeting when the planning officer present said:

> "I have found the letter of comment from the aero club who have raised an objection to the scheme, but not on the basis of safeguarding. They've raised an objection on the basis of noise potential and other – scale and density, other points we've heard discussed this evening. And there's not a concern in the report regarding what has been raised by the aero club." *(emphasis added)*.

67. I consider that the reasons challenge has no basis in law. The duty to give reasons has been recently considered by the Supreme Court in *R (CPRE Kent) v Dover DC* [2018] 1 WLR 108, in the judgment of Lord Carnwath. There is no statutory duty to give reasons for granting planning permission. The Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2013 repealed the duty even to give summary reasons for granting planning permission on the grounds that it was "burdensome and unnecessary" (at [29]). There is no general common law duty to give such reasons, save in "special circumstances" where reasons may be required, in the interests of fairness and transparency, in applications where there is widespread public controversy, and members are departing from the recommendation of officers and the development plan (at [57], [59], [60]). None of those circumstances arose in this case.

68. In any event, the main reasons for the grant of planning permission, despite the Claimant's objections, were clear from the OR and the NA.

Ground 2

69. Under Ground 2, the Claimant submitted that the Council failed to recognise the inadequacies of the NA, in particular that the NA did not assess all the activities that the Airfield is permitted to carry out.

70. The Claimant submitted that this was contrary to the "agent of change" guidance in paragraph 182 of the NPPF 2019, and in particular, paragraph 30-009 of the PPG which states that the developer will need to take account of permitted activities, as well as current activities. The Council failed to have regard to the NPPF and PPG.

Conclusions

71. The starting point is that a planning officer and a Planning Committee can be assumed to take into account, and properly apply, the NPPF and the PPG, unless there are positive contra-indications to suggest otherwise. In my view, there are no such contra-indications in this case.

72. I find it inconceivable that the planning officer overlooked the potential relevance of the NPPF and the PPG to the noise issues in the application, not least because it was extensively referred to in the NA.

73. In this case, the Claimant set out paragraph 182 of the NPPF at the beginning of her letter of objection to the Council, dated 8 August 2019. The planning officer faithfully summarised the objection in the OR, clearly referencing the paragraph 182 principle:

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> "Noise sensitive development next to airfield and working yard would be prejudicial to the operation of existing airfield/business; harm to amenity for future residents."

74. In response to the concerns about the noise impacts of the Airfield, the planning officer recommended that the issue of internal noise should be addressed by condition 23, which required the IP to acoustically insulate all habitable rooms, and provide appropriate ventilation, to ensure an acceptable living environment for future occupiers. Thus, the developer was required to take responsibility for mitigating potential adverse effects, as advised by paragraph 182 of the NPPF.

75. At the meeting, Members of the Planning Committee approved condition 23 and discussed the safeguarding of the Airfield for the future, noting that the Airfield "will remain ad infinitum".

76. The planning officer was not required to set out passages from the NPPF and the PPG in her report. As the Court said in *Fabre*, "[p]art of a planning officer's expert function in reporting to the committee must be to make an assessment of how much information needs to be included in his or her report to avoid burdening a busy committee with excessive and unnecessary detail".

77. The Claimant submits that the Council failed to have regard to the passage in paragraph 30-009 of the PPG which states that the developer will need to take account of permitted activities, as well as current activities, because the NA only assessed activities on 2 days in September. However, as I have already concluded under Ground 1, the Council was entitled to rely upon the NA.

78. The Claimant is seeking to elevate the PPG into a binding code which strictly prescribes the steps that a local planning authority must follow when undertaking its assessment, otherwise it will be found to have acted unlawfully. In my judgment, that is a mistaken approach. The PPG is merely practice guidance, which is intended to support the policies in the NPPF. As Lieven J. said in *R (Solo Retail) v Torridge DC* [2019] EWHC 489 (Admin), at [33]:

> "33. Therefore, Mr Neill has to fall back under Ground One, on the NPPG and in particular the detailed steps for an impact assessment set out in para 017 referred to above. In my view the NPPG has to be treated with considerable caution when the Court is asked to find that there has been a misinterpretation of planning policy set out therein, under para 18 of *Tesco v Dundee*. As is well known the NPPG is not consulted upon, unlike the NPPF and Development Plan policies. It is subject to no external scrutiny, again unlike the NPPF, let alone a Development Plan. It can, and sometimes does, change without any forewarning. The NPPG is not drafted for or by lawyers, and there is no public system for checking for inconsistencies or tensions between paragraphs. It is intended, as its name suggests, to be guidance not policy and it must therefore be considered by the Courts in that light. It will thus, in my view, rarely be amenable to the type of legal analysis by the Courts which the Supreme Court in *Tesco v Dundee* applied to the Development Policy there in issue."

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79. In my view, Lieven J.'s approach is to be preferred to that of David Elvin QC sitting as a Deputy Judge of the High Court in *R (Bent) v Cambridgeshire County Council* [2017] EWHC 1366 (Admin) at [36], [37].

80. The Council was aware, from its own local knowledge, and from the objections submitted to it by the Claimant, of the range of activities at the Airfield. It had a detailed noise assessment which included noise monitoring carried out across a two-day period of good weather in early September, including on a day when regular loud noise events were recorded as a result of aircraft activity on the runway nearest the Site (runway 21). It considered that the methodology of the NA was acceptable and the results were robust. The Council considered that it had sufficient information to enable it to reach a decision, and it proceeded to do so. Absent a finding of irrationality, its decision is unassailable. I accept the Defendant's submission that it cannot sensibly be argued that no reasonable authority could have been satisfied, having regard to the NA, the Claimant's objections, and the local knowledge of Committee Members, that the noise environment of the Site was sufficiently understood for a decision to be taken, applying *Hayes* at [29] – [31].

Ground 3

81. Under Ground 3, the Claimant submitted, by reference to the OR, that the Council erred in applying 66dB LAeq (16 HOURS) as a threshold above which there would be an amenity impact from the Airfield, without considering the qualitative impacts together with the noise threshold of 55dB LAeq (16 HOURS), as set out in up-to-date guidance and policy (NPPF 2019, PPG, the BS and the WHO guidance).

82. The Claimant contended that the lower threshold was clearly material, as even if the noise reading of 54.6dB LAeq had been robust, the NA indicated that there was potential for a SOAEL, or at the very least, a LOAEL.[2]

Conclusions

83. Policy NAP2 is a development plan policy on the impact of aircraft noise on residential development. Section 70(2) TCPA 1990, read with section 38(6) PCPA 2004, creates a presumption that a decision must be made in accordance with the plan, unless material considerations indicate otherwise. Therefore, the OR was clearly correct to apply Policy NAP2 as the starting point.

84. On a fair reading of the OR, the planning officer also took into account and applied the more up-to-date guidance on the assessment of noise, as material considerations. I refer to my conclusion under Ground 2 that the planning officer had regard to the NPPF 2019 and the PPG. Guidance from other sources, such as the BS and WHO guidance, was set out in some detail in the NA, and was the basis for the NA's conclusions. The OR expressly accepted the NA's methodology and found its results to be robust.

[2] These terms are explained at paragraph 37 above.

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85. In the section of the report headed "Noise", the OR addressed noise concerns from Carters Yard in paragraph 9.49, and the Airfield in paragraph 9.50 and 9.52. In paragraph 9.49, the OR said in terms:

> "For dwellings, BS8233: 2014 advises that outdoor living noise levels should not exceed 55dBLAmax *(sic)* and for indoor sleeping noise levels should not exceed 30dB."

It is pedantic and unreal to suggest that the planning officer did not also have regard to the BS when she turned in the next paragraph to consider the noise impacts from the Airfield.

86. The NA stated in paragraph 4.9:

> "Adjacent to the Airfield, gardens used for amenity purposes would have an unscreened outdoor noise level of approximately 54 dB, which would satisfy the BS8233/WHO outdoor criterion of 55dB. Therefore, any site layout can be adopted adjacent to the Airfield without the outdoor noise criterion being exceeded."

87. In paragraph 9.50, the OR said:

> "From the noise survey, the Noise Assessment confirms that gardens adjacent to the Airfield would have an unscreened outdoor noise levels of approximately 54dB and so the proposal would be acceptable in this respect."

Thus, the planning officer specifically referred to and applied the advice in the NA, which was based on the guidance from the BS and the WHO, and which had regard to the Noise Exposure Hierarchy, set out in the PPG. The planning officer, and the Planning Committee, were entitled to reach this conclusion, on the material before them. It was an exercise of planning judgment, which the Claimant cannot properly challenge in a claim for judicial review as it does not disclose any error of law.

88. As to internal noise levels, based on the advice in the NA that mitigation was required to bring noise levels within the BS and WHO guidelines, the OR accepted the condition proposed by the Council's EPO that the IP should be required to acoustically insulate all habitable rooms, with appropriate ventilation, to ensure an acceptable living environment for future occupiers. Unlike the Claimant, I do not read the NA as identifying a risk of a SOAEL, but in any event, the Claimant accepted that any such risk would be avoided by the proposed mitigation.

Final conclusions

89. For the reasons set out above, Grounds 1, 2 and 3 do not succeed, and so the claim for judicial review is dismissed.

90. The Claimant is ordered to pay the Defendant's agreed costs. The Interested Party's application for costs is refused. It is well-established that, following a substantive hearing, an unsuccessful claimant should not be required to pay two sets of costs, to both the decision-maker and the developer, unless there is an issue which the decision-

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maker does not deal with, or which requires separate representation by the developer: see *Bolton v Metropolitan District Council v Secretary of State for the Environment* [1995] 1 WLR 1176, per Lloyd LJ at 1178G-H. The noise assessment issues were dealt with by the Defendant, and did not require representation by the Interested Party. Although the Defendant did not file Detailed Grounds, as well as Summary Grounds, it was fully represented at the hearing.

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