



Neutral Citation Number: [2022] EWHC 1828 (Admin)

Case No: CO/4329/2021

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

Bristol Civil Justice Centre
2 Redcliffe Street, Bristol, BS1 6GR

Date: 08/07/2022

Before :

HIS HONOUR JUDGE JARMAN QC

Sitting as a judge of the High Court

Between :

**CAMPAIGN FOR THE PROTECTION OF
RURAL ENGLAND**

Claimant

- and -

TORRIDGE DISTRICT COUNCIL

Defendant

- and-

RENEWABLE ENERGY SYSTEMS LIMITED

Interested Party

**Ms Ruth Stockley (instructed by Richard Buxton Solicitors) for the claimant
Mr Tucker QC and Ms Stephanie Hall (instructed by Burges Salmon LLP) for the**

Interested Party

The defendant was not present or represented

Hearing dates: 22 June 2022

Judgment Approved by the court

HHJ JARMAN QC:

Introduction

1. The claimant is the Devon branch of the Campaign to Protect Rural England, an environmental charity, and with permission of Kerr J, seeks judicial review of a decision dated 10 November 2021 of the defendant (the authority), as local planning authority for the district of Torridge, to grant planning permission for a proposed 42MW photovoltaic solar farm, all ancillary grid infrastructure and associated works at Monks Farm and Trelana, Pyworthy, Holsworthy, Devon. The land in respect of which permission was granted, which comprises some 66 hectares, is currently used for agriculture.
2. The defendant does not resist the claim, but the interested party (the developer) to whom the grant was made, does.
3. The balance between promoting renewable energy on the one hand, and protecting landscape on the other, is classically a matter of planning judgment which is entrusted by Parliament to local planning authorities applying development plan policies, in which courts should not interfere. However, the three inter-related grounds of challenge in this case allege that the officer's report to the authority's planning committee on 4 November 2021, recommending the grant of permission, was misleading as to the landscape evidence, did not deal with whether the proposed development was in conflict with policy, and came to a conclusion which was irrational.

Development plan policies

4. The relevant plan in this case is the North Devon and Torridge Local Plan 2011-2031 (the local plan) and the relevant policies are ST14, ST16, and DM08A.
5. Policy ST14 states, so far as material:

“Policy ST14: Enhancing Environmental Assets

The quality of northern Devon’s natural environment will be protected and enhanced by ensuring that development contributes to:

.....

(f) ensuring development conserves and enhances northern Devon’s local distinctiveness including its tranquillity, and the setting and special qualities of Exmoor National Park including its dark night skies;

(g) protecting and enhancing local landscape and seascape character, taking into account the key characteristics, the historical dimension of the landscape and their sensitivity to change”.

6. The supporting text to that policy states:

“The local distinctiveness of northern Devon’s landscape reflects its topography, geology, soil and climate as well as its cultural heritage. Northern Devon is situated within The Culm and Exmoor national character areas, and distinct Devon Character Areas are defined through the Devon Landscape Character Assessment. The key characteristics of all landscape character types within northern Devon are identified in the Joint Landscape Character Assessment, including their historic dimensions. All landscape character types will be conserved and enhanced in accordance with the Joint Landscape Character Assessment’s ‘protect, manage and plan’ landscape strategy for each landscape character type, with Policy ST04: Improving the Quality of Development, seeking to strengthen local distinctiveness. Sensitivity of landscapes to accommodate change will be assessed through landscape sensitivity assessments.”

7. Policy DM08A is concerned with “Landscape and Seascape Character” and states :

“Development should be of an appropriate scale, mass and design that recognises and respects landscape character of both designated and

undesigned landscapes and seascapes; it should avoid adverse landscape and seascape impacts and seek to enhance the landscape and seascape assets wherever possible. Development must take into account and respect the sensitivity and capacity of the landscape/seascape asset, considering cumulative impact and the objective to maintain dark skies and tranquillity in areas that are relatively undisturbed, using guidance from the Joint Landscape and Seascape Character Assessments for North Devon and Torridge.”

8. The supporting text states:

“The key characteristics and extent of all landscape and seascape character types and areas within northern Devon are identified in the Joint Landscape Character Assessment and the North Devon and Exmoor Seascape Character Assessment respectively. These key characteristics will be conserved and enhanced.”

9. The Joint Landscape Character Assessment (the character assessment) referred to in those policies was prepared by land use consultants for the authority, the North Devon District Council, Devon County Council and Natural England in 2010. It identifies the site as being within landscape character type 5A (inland elevated undulating land), and sets out the key characteristics of such areas, as follows:

“Medium-scale regular fields of recent enclosure, with pockets of smaller fields of medieval origin on valley slopes and tracts of unenclosed rough grazing along valley bottoms. Fields enclosed by mixed species hedges (predominantly thorn) with flower-rich banks and frequent hedgerow trees in sheltered locations. Some locally distinctive hedges topped with gorse and beech (e.g. near Hele and around Holsworthy). Occasional amalgamated fields bounded by fences. Strong farmed character with pasture fields grazed by cattle and sheep, occasional fields of arable cultivation and rough grazing of rushy meadows along valleys.....Overall high levels of tranquillity with dark night skies.”

10. The character assessment summarises the special qualities of landscape character type 5A thus:

- “• Long views from elevated ridgelines.
- Patchwork of fields and hedges.

- Working, rural landscape.
- Valued Culm grassland and wetland habitats providing texture to the landscape.
- Quiet, relaxed and tranquil.”

11. The character assessment then sets out the strategy for such landscape character types:

“OVERALL STRATEGY: To protect the landscape’s important role in agriculture whilst strengthening and expanding fragmented areas of semi-natural habitat, the hedge network and woodlands.

PROTECT: Protect the landscape’s strong sense of tranquillity and remoteness and long-ranging views (including to Dartmoor National Park)”.

12. Policy ST16 of the local plan, so far as material, provides:

“Policy ST16: Delivering Renewable Energy and Heat

(3) Renewable and low carbon energy and heat generating development (other than wind energy) will be supported in the landscape character types where:

(a) landscape sensitivity is best able to accommodate them, assessed in accordance with the Councils' Landscape Sensitivity Assessments and by the landscape's sensitivity to accommodate the scale of development;

.....

(4) Renewable and low carbon energy development (other than wind energy) will be supported where it can demonstrate that the cumulative impact of operational, consented and proposed development on landscape character does not become a significant or defining characteristic of the wider fabric, character and quality of the landscape.”

13. The supporting text to that policy states:

“Cumulative impacts of existing operational, consented and proposed developments will be assessed, and suitable mitigation measures proposed, to minimise impacts on biodiversity and landscape quality. A developer must demonstrate that cumulative impact does not become a significant or defining characteristic of the wider landscape, including across administrative boundaries and different landscape character types.

...

Opportunities for renewable energy proposals will be influenced by natural resource availability and the sensitivity of the environment to accommodate different types and scales of installation including cumulative impact. The Councils have assessed the relative sensitivity of each landscape character type, as described in the Joint Landscape Character Assessment for North Devon and Torridge (2011), to accommodate different scales of wind energy and field-scale photovoltaic development. Landscape and visual impacts across administrative boundaries will be considered using Devon's landscape policy guidance.”

14. The assessment of sensitivity referred to in that last paragraph is An Assessment of the Landscape Sensitivity to Onshore Wind Energy & Field-Scale Photovoltaic Development in Torridge District (the sensitivity assessment), carried out by consultants for the authority in November 2011. It states:

“The study will form part of an evidence base to support the emerging Torridge District Core Strategy and the outputs will enable Torridge District to make robust, well-informed decisions on the planning applications received for wind and solar PV developments.”

15. Table 6.2 deals with solar farms in landscape character type 5A as follows:

“The strategy is for a landscape with occasional solar PV developments (size of development should relate to landscape scale which varies within the LCT, up to and including medium scale).”

16. In relation to the size of development, a medium scale solar panel farm is defined as between 5 to 10 hectares, and a large scale solar panel farm is between 10 to 15 hectares. In dealing with the sensitivity to different sizes of solar development, the sensitivity assessment provides:

“The scale of the fields in this LCT indicate that it is likely to be particularly sensitive to ‘large’ scale solar PV development.”

17. The landscape strategy is then set out as follows:

“The strategy is for a landscape with occasional solar PV developments (size of development should relate to landscape scale which varies within the LCT but the landscape is likely to be able to accommodate solar PV

developments up to and including medium scale). There may be more than one well sited solar PV development in the LCT, but they should be clearly separated so that, although each PV development influences the perception of the landscape at close proximity, collectively they do not have a defining influence on the overall experience of the landscape.”

Other evidence as to landscape impact

18. In support of its application, the developer submitted a landscape and visual impact appraisal, prepared by two environmental consultants at Neo Environmental Ltd. That assessed the impact on the site, the effect on the nearby character area CA31, and the visual effects of the proposed development from a range of viewpoints and receptors. The conclusion in relation to the effect on landscape character type 5A was one part of a wider assessment of landscape and visual impact which was said to be limited, given the low elevation of the site, low height of the solar arrays and presence of vegetation. It concluded:

“The Proposed Solar Farm will directly affect LCT 5A: Inland Elevated Undulating Land and will result in a solar farm located over c. 66.33 hectares of this landscape. This will result in a localised direct Moderate adverse landscape effect and a Minor adverse effect across the wider extents of this landscape. The landscape effect will reduce to Moderate/Minor to adverse locally by c. Year 5 as the proposed mitigation planting matures helping to further contain and integrate the Proposed Development within the LCT 5A: Inland Elevated Undulating Land.”

19. Adverse effect is there stated to be moderate where the development would have a noticeable change to the landscape where it would appear to be out of place, and to be minor where the development would be slightly at odds with the landscape.
20. In dealing with the application, the authority instructed Peter Leaver of David Wilson Partnership to carry out a review of that appraisal. The executive summary contains the following:

“The [appraisal] and our own assessment predict operational landscape effects on site and in the immediate surrounding area (up to around 1km from the site). In this area, development would appear out of place and would bring about a noticeable change in landscape character (Moderate adverse and Moderate/Minor adverse landscape effects). Cumulatively with other power infrastructure developments, the development would lead to a noticeable change to landscape character (Moderate adverse cumulative effects). Effects will not be noticeable outside the study area (c. 2km from the site). In the operation stage, moderate adverse visual effects are predicted from viewpoints looking down on the site where the scale of development is apparent, and the mitigating effects of planting are less effective. Minor adverse visual effects will be from closer quarters, where mitigating planting and the screening of existing woodland and hedgerow is most effective. Adverse visual effects are unlikely at distances of over 1km from the site.”

21. The review summarised its assessment of landscape effects as follows.

“Our assessment is that on site and in the immediate surrounding area (up to around 1km from the site) the development would appear out of place and would bring about a noticeable change in landscape character. In the wider extent of the study area, the development would, when taken cumulatively with other developments, lead to a noticeable change to landscape character.”

22. In relation to landscape character type 5A, the review concludes:

“The Torridge Landscape Sensitivity Study assesses LCT5a as having medium to high sensitivity to solar PV in the 10-15ha size range, with lower sensitivity for smaller arrays. Mixed field size, including some smaller, more historic field boundaries, increases sensitivity to larger developments. Development would cause a noticeable change to characteristics/qualities of tranquillity, long views and the strongly rural character of the landscape. Characteristic field pattern retained and strengthened by hedgerow management and planting. Development guidelines recommended by Sensitivity Study generally followed – magnitude of change reduced as a result. Nevertheless, scale of development would lead to cumulative landscape impacts with other solar arrays and power infrastructure. Character of landscape would change so that solar PV become one of its defining characteristics.”

The officer's report

23. The officer's report on the application set out a list of relevant policies, including the three dealt with above, but only ST16 was quoted. The impact of the proposals on landscape character was dealt with in section three, and this

was acknowledged to be a material consideration. The sensitivity assessment was summarised as follows:

“This identifies the likely landscape impacts of a large-scale solar farm within Landscape Character Type 5A as having a medium to high sensitivity. The Assessment defines such an impact as being a situation where the key characteristics and qualities of the landscape are sensitive to change from this type and scale of renewable energy. It is noted that due to the age of this document (adopted 2011), a large-scale solar farm is defined as being 10-15ha whereas the area which is likely to be proposed in this instance would be approximately 66ha. The landscape strategy for landscape character type 5A is for occasional photovoltaic developments with a scale related to the landscape.”

24. The report summarised the authority’s review as follows:

“In terms of Landscape Effects, the Review concludes that on site and within the immediate surrounding area to the application site (up to approximately 1 km), the development would appear out of place and bring about a noticeable change in landscape character. In the wider area, the development is considered to result in a noticeable change in landscape character when considered cumulatively with other developments. The beneficial effects of mitigation planting are also noted from year 5 onwards.”

25. In terms of cumulative landscape impacts, the report set out the conclusion of the review that cumulatively the proposed development would result in a moderate adverse cumulative effect in terms of its impact on landscape character, but that the effects of the development would not be noticeable outside of the study area of 2km.

26. The report, which did not state whether the application complied with policies ST14 or ST16, concluded:

“The proposed development is considered to result in an acceptable landscape impact, taking account of the proposed mitigation, nature and siting of the proposal within the surrounding undulating landscape...”.

The planning committee meeting and decision

27. The claimant submitted three letters of objection in relation to the application, which stated that the landscape character type 5A had been assessed in the sensitivity assessment as particularly sensitive to large scale solar developments and that the area was therefore unsuitable for the proposed development which conflicts with policies ST14, ST16 and DM08A, amongst others.
28. Members of the claimant attended the committee meeting when the application was considered and objected to the proposal. Nine members were present, including the chair and vice chair. The minutes record that eight of the members had attended site. It is also recorded that cumulative impact and impact on the landscape were key issues raised by members as part of the discussion, and that they had an opportunity to put questions to Mr Leaver, the author of the authority's review, who was also present at the meeting. He indicated that the developer's appraisal was "fit for purpose." The members then voted, with seven in favour of the application and two abstaining.
29. The authority's grant of permission, dated 10 November 2021, states:

"The scheme is therefore considered appropriate and in accordance with Policies: North Devon and Torridge Local Plan 2011-2031:... ST14 (Enhancing Environmental Assets)..... ST16 (Delivering Renewable Energy);...DM08A (Landscape and Seascape Character)".

The law

30. Section 38(6) of the Planning and Compulsory Purchase 2004 Act 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."
31. The approach which local planning authorities must take to comply with that statutory requirement was not in dispute before me, and has recently been

helpfully summarised by Lang J in *London Borough of Hackney v Secretary of State for Housing, Communities and Local Government and Others* [2021]

EWHC 720 (Admin), who said at paragraph 72:

“The duty under section 38(6) PCPA 2004 can only be properly performed if the decision-maker, in the course of making the decision, establishes whether or not the development accords with the development plan as a whole (*Corbett v Cornwall Council* [2020] EWCA Civ 508 per Lindblom LJ at [26] – [30] and the cases there cited). This is “an essential part of the decision making process” (*Tiviot Way Investments Ltd* [2015] EWHC 2489 (Admin) per Patterson J. at [27]).”

32. She continued at paragraph 75:

“Thus the Inspector identified the relevant policies and applied them to the development. Inexplicably, the Inspector then failed to determine whether or not the development accorded with the development plan, read as a whole, and so she omitted an essential step, as required by the authorities referred to at paragraphs 69 and 72 of my judgment. I do not consider that this step can be implied, even on a benevolent reading of the decision letter.”

33. The reference to a benevolent reading of the decision letter, also applies to the reading of an officer’s report, where, as here, an authority’s decision is based on such a report. The principles to be applied where an officer’s report is criticised were summarised by Lindblom LJ in *Mansell v Tonbridge Borough Council* [2017] EWCA Civ 1314 at paragraph 42 as follows:

“(1) The essential principles are as stated by the Court of Appeal in *R. v Selby District Council, ex parte Oxtou 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, 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 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.”

34. In *R(on the application of Steer) v Shepway DC [2018] EWHC 238 (Admin)*,

Lang J at paragraph 41 observed that planning committee members

“...are an informed readership and can be expected to have knowledge of local and national planning policies (*R v. Mendip DC ex p. Fabre (2000) 80 P & CR 500*, per Sullivan J. at 509) and the statutory tests (*Oxton Farms, Samuel Smiths Old Brewery (Tadcaster) v Selby District Council 18 April 1997* , per Pill LJ).”

35. In *Safe Rottingdean Ltd v Brighton and Hove Council [2019] EWHC 2632*

(Admin) Sir Duncan Ouseley stated at paragraph 103:

“Compliance with the duty, in s38(6) of the 2004 Act, does not require a view to be expressed about whether a development does or does not comply with every relevant policy in the development plan...”

36. The appropriate test of irrationality in this context was set out by Sedley J in *R v Parliamentary Commissions for Administration ex p Balchin* [1996] 1 PLR 1 as follows:

“What the not very apposite term 'irrationality' generally means in this branch of the law is a decision which does not add up - in which, in other words, there is an error of reasoning which robs the decision of logic.”

Ground 1

37. The first criticism of the officer’s report in this case is that it inaccurately summarised the findings of the sensitivity assessment, by stating that the strategy for the area in which the proposed development is sited is for occasional solar panel development with a scale related to the landscape, whatever the scale of the development. Table 6.2, which was not referred to, makes clear that for this area development should relate to landscape scale up to and including medium scale, namely up to 10 hectares. The proposed scale of the permitted development, namely some 66 hectares, significantly exceeds that limit, and therefore the report is misleading on a critical matter relating to the application of policy ST16(3)(a).
38. Ms Stockley, for the claimant, accepts that the sensitivity assessment deals with just one element of landscape character effects, namely sensitivity, and so was not determinative of the acceptability of the application, but submits that it was a material issue required to be properly considered. Policy ST16(3)(a) requires a consideration of the impact of the proposed development on sensitivity as assessed by the sensitivity assessment. Although it was open to the members to prefer the more recent and site-specific evidence contained in the developer’s

appraisal and the authority's review of it, the members had to consider the sensitivity assessment as part of the section 38(6) decision-making process. What the officer's report did not say was that the sensitivity assessment stated that such development of only up to 10 hectares could be accommodated in this landscape character type and that of between 10 and 15 hectares could not.

39. Furthermore, the officer's report failed to inform members of the critical finding of the authority's review in relation to cumulative impact, namely that the character of the landscape would change so that solar PV would become one of its defining characteristics. It also failed to state that, as a consequence, policy ST16(4) does not support the proposed development, because such support is only given to development where it does not become a significant or defining characteristic of the wider fabric, character and quality of the landscape.
40. Ms Stockley submits that the decision may well have been different had members been properly informed of the conflict with policies ST14 and ST16, because in the decision it was stated that the permitted development was in accordance with these policies.
41. Mr Tucker QC, for the developer, submits that the documents referred to in the officer's report were available to members, and that the sensitivity assessment had been a material consideration since 2011. Members should be taken to be familiar with the authority's documents and policies.
42. He further submits that the officer's report clearly set out that the sensitivity assessment only considered solar developments up to 10-15 hectares and members would have understood from that that it did not support a larger scheme. In that context, the failure to refer to "up to and including medium

scale” is not an omission of any substance. That assessment is not scheme-specific, but is a guide to the broad sensitivity of landscape character areas across the whole district to hypothetical renewable energy schemes.

43. He continues that, read as a whole, policy ST16 specifies the sensitivity assessment as one of the tools to judge sensitivity, in addition to consideration of the landscape sensitivity more generally, and is not the determinant factor. The developer’s appraisal and the authority’s review both considered in detail the sensitivity of the landscape to the proposed development and concluded that it could be acceptably accommodated in this particular landscape. The latter document noted the marked difference between the sensitivity assessment and the appraisal but concluded that notwithstanding the sensitivity of the landscape, the landscape impact of the proposed development on the site was moderate. The officer and the members, as they were entitled to do, preferred the up to date and site-specific evidence on sensitivity over the generic sensitivity assessment. That was a planning judgment.
44. He further submits that whilst there was no reference in the review to the cumulative effect of development becoming the defining character, the omission of one sentence of the review does not amount to an error of law, and the report taken together with Mr Leaver’s indication to the members that the appraisal was fit for purpose, made clear that the conclusions in the appraisal and the review did not significantly differ.
45. I am not satisfied that the officer’s report did significantly mislead the members, who are to be taken to be informed readers with knowledge of the policies in question and of the sensitivity assessment, which was one tool by which to

assess sensitivity, but one which dealt with the sensitivity of a wide area, to renewable energy development. The officer's report referred to the sensitivity assessment, but also to the fact that because of its age, large solar farms were then considered to be between 10 and 15 hectares. It refers to the likely landscape impact of a large scale solar farm on this character type as having medium to high sensitivity. Whilst it was not specified that the sensitivity assessment concluded a solar farm of 15 hectares could not be accommodated, it must have been apparent to members that a solar farm over four times the size of what was then called large scale according to the assessment, would not be supported by it.

46. It is tolerably clear that the officer and the members preferred the site specific and up to date evidence in the appraisal and the review. That was something they were entitled to do and involved planning judgment.
47. As to the cumulative effect of the proposed development becoming the defining character, policy ST16(4) sets out the context in which this is to be considered as the wider fabric, character and quality of the landscape. The officer's report correctly summarised the review that on site and up to 1km the proposed development would be out of place and would produce a noticeable change. In respect of the wider areas this would produce a noticeable change when considered cumulatively. The report also accurately summarised the review as saying there would be moderate adverse cumulative effect in terms of impact on landscape character, but that the effects of the development would not be noticeable outside of the study area of 2km.

48. In my judgment, reading the report fairly as a whole, that does not amount to a significantly misleading summary of the review, and ground 1 is not made out.

Ground 2

49. Ms Stockley submits that the officer's report did not spell out the conflict with policies ST14, DM08A and ST16. The developer's appraisal and the authority's review of it indicated conflict with policy ST14 which requires that the natural environment is protected and enhanced by ensuring that any development conserves and enhances Northern Devon's local distinctiveness, including tranquillity, and protects and enhances local landscape character taking account of its key characteristics and sensitivity to change. Its supporting text emphasises the high levels of tranquillity as a key characteristic of landscape character type 5A.
50. These documents also show a conflict with policy DM08A which requires development to be of a scale that recognises and respects landscape character and avoids adverse landscape impacts with particular reference to landscape character type 5A.
51. Further, the scale of the proposed development far exceeds the maximum scale identified in the sensitivity assessment for such areas, and is thus contrary to policies ST16(3)(a) and ST16(4).
52. The officer's report did not deal with these conflicts, and it is to be assumed that members determined the application on the basis of that report. Accordingly, the authority failed to take an essential step in its section 38(6) statutory duty.

53. Ms Stockley contrasted this with another officer's report dated 14 April 2022 in relation to an application for a similarly sized solar farm near Bideford, which did set out that that proposed development was in some conflict with policies ST14 (g), ST16(3) (a), and DM08 due to the adverse impacts arising from the scheme, and the landscape sensitivity to this scale of development. It concluded, however, that overall the landscape impacts are not significantly adverse. That development was subsequently granted permission.
54. Mr Tucker QC, relying on *Safe Rottingdean Ltd*, submits there was no need for the officer in her report to deal with possible conflict of every policy. Moreover, the tests in policies ST14 and DM08A both involve a judgement whether development is appropriate in landscape terms. ST14 is a broad environmental policy which seeks to protect the natural environment, with landscape being but one component. Whilst DM08A is more targeted, it nevertheless involves a judgment whether development is appropriate and whether it respects the landscape character. These two policies add little to the judgement required by ST16 which is the more targeted policy setting out principles against which to judge the acceptability of this particular type of development.
55. He further submits that the officer's report expressly concluded that the landscape impact was acceptable, and a reasonable reading of it means that the officer considered that the proposed development was in accordance with these landscape policies. That was a matter for the planning judgment of the members. It is clear from the decision notice that the members also considered that the proposed development would comply with policy, and that was a decision which was open to them. They were not significantly misled.

56. I prefer the latter submissions. It is likely to have been obvious to the informed members that the application gave rise to competing interests of protecting the landscape and promoting renewable energy, as appears from the discussions at the meeting summarised in the minutes. It was not essential in these circumstances to expressly deal in the officer's report with the extent of any conflict with the particular policies seeking to protect the landscape. Development plans are likely to contain policies which seek to protect or promote competing interests. What must be considered is whether the proposed development complies with the plan *as a whole*, per Lang J in *Hackney*. The balancing of the competing interests in the present case was a matter of planning judgment, and there was recent and site specific evidence on which that judgment could be exercised.

Ground 3

57. Ms Stockley submits that the authority acted unlawfully by irrationally concluding that the proposed development would be consistent with policies ST14, ST16 and DM08A. There is no logic to it given the evidence before the members.
58. Mr Tucker QC submits that the test of irrationality is a high one. Policy ST14 does not require any proposed development which results in some harm to the landscape character to be refused. It involves several elements, and even if conflict had been identified with ST14(f) and (g), that does not necessarily amount to conflict with the whole policy, which requires the application of a planning judgement.

59. As for policy ST16, he submits that it was also a matter of judgement as to whether the development would become a significant or defining characteristic of the wider fabric, character and quality of the landscape. The policy therefore considers the wider fabric, whereas the developer's appraisal and the authority's review concluded that the proposed development would not be noticeable outside the 2km study area..
60. He points out that the authority had also issued a negative screening opinion, and the landscape impacts had been considered to be moderate in the appraisal, the review and in the officer's report, and it was not irrational for the members to conclude that a moderate impact is an acceptable one. Similarly, policy DM08A requires a similar judgement as to whether development recognises and respects landscape character and it is not irrational to conclude that moderate harm over a small area is sufficiently respectful to be in accordance with DM08A.
61. In my judgment, whilst other officers and members may have taken a different view as to conflict with policy, as the officer in the Bideford development appears to have done, the high hurdle of showing that there is no logic to conclusions of the officer and the members in the present case, is not reached. They had recent and site specific evidence before them as to the landscape impact, and therefore had reasons on which to base the conclusion. Accordingly ground 3 fails as well.

Conclusion

62. Accordingly, the claim is dismissed. Mr Tucker QC submits that even if one or more of the grounds of challenge are made out, it is highly likely, within the

meaning of section 31(2A) of the Senior Courts Act 1981, that the result would have been the same had not the conduct complained of not taken place, and so relief should be refused. In light of my conclusions, this does not arise, although in this respect it is noteworthy in my judgment that the similar development near Bideford was permitted, even though the officer in that application concluded that there may be some conflict with the policies referred to above.

63. I invite counsel to agree a draft minute of order and to attempt to agree consequential matters. Any which cannot be agreed can be determined on the basis of written submission, together with a draft order agreed as far as possible, within 14 days of hand down of this judgment. I am grateful to counsel for their focussed and helpful submissions.