

Neutral Citation Number: [2025] EWHC 1848 (Admin)

Claim No: AC-2024-MAN-000361

**IN THE HIGH COURT OF JUSTICE
KING’S BENCH DIVISION
PLANNING COURT
SITTING IN MANCHESTER**

Manchester Civil Justice Centre,
1 Bridge Street West,
Manchester
M60 9DJ

BETWEEN:

PROTECTING OUR PARK LIMITED

Claimant

-and-

CHESHIRE EAST BOROUGH COUNCIL

Defendant

-and-

SYMPHONY PARK HOLDINGS LIMITED

Interested Party

MR PIERS RILEY-SMITH instructed by **RICHARD BUXTON SOLICITORS** for the **Claimant**

MR ANDREW BYASS instructed by the **DEFENDANT’S IN HOUSE SOLICITORS** for the
Defendant

THE INTERESTED PARTY did not appear and was not represented

Hearing date: 24 June 2025

JUDGMENT

This judgment was handed down remotely at 10am on 18 July 2025 by circulation to the parties or their representatives by email and by release to the National Archive,

HIS HONOUR JUDGE PEARCE

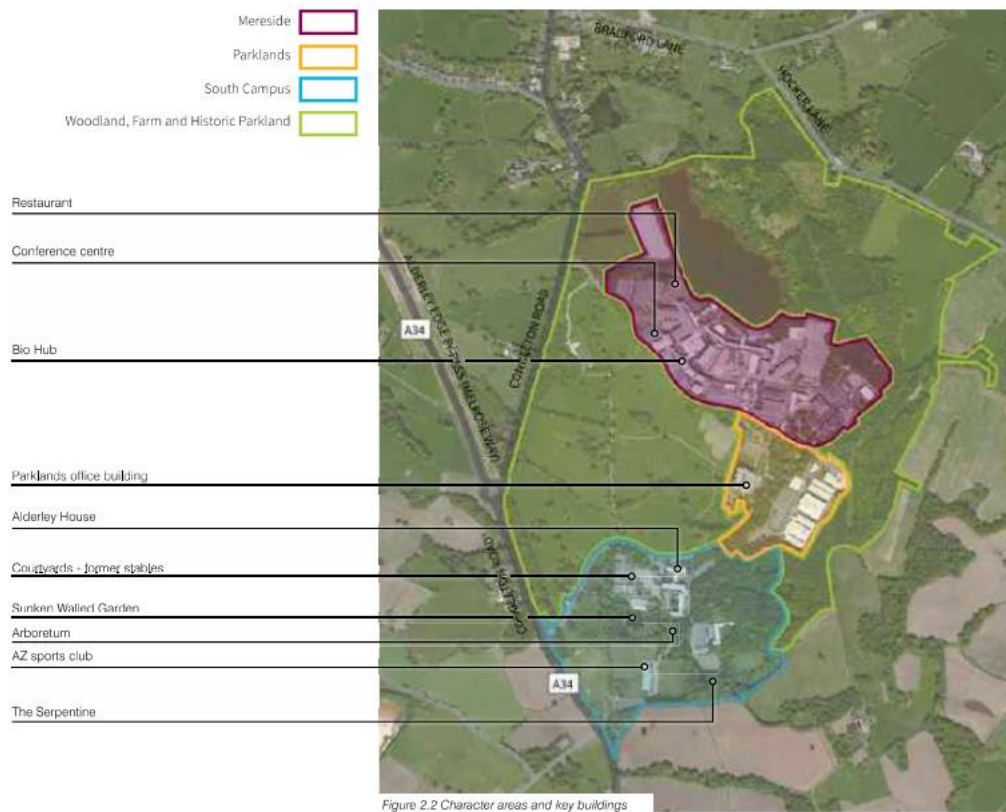
INTRODUCTION

1. The Claimant brings judicial review proceedings seeking to quash the decision of the Defendant dated 29 August 2024 granting planning permission for the construction by the Interested Party of buildings, to be known as Symphony Park, at Heatherley Woods, Alderley Park, Nether Alderley, Cheshire. The proceedings are brought with permission granted by Mr C M Ockelton sitting as a Deputy Judge of the High Court on 28 February 2025.
2. The Claimant issued the Claim Form on 10 October 2024 which was accompanied by the Statement of Facts and Grounds. The Defendant filed an Acknowledgement of Service, indicating an intention to contest the claim, and Summary Grounds of Defence. The Interested Party also filed an Acknowledgement of Service, indicating an intention to contest the claim, and Summary Grounds of Resistance, together with a witness statement from Mr Christopher Oglesby dated 31 October 2024. Following the grant of permission, the Defendant filed Detailed Grounds of Resistance and a witness statement from Mr David Malcolm dated 7 April 2025. The Interested Party also filed supplemental grounds of resistance.
3. In the event, only the Claimant and the Defendant participated in the hearing before me on 24 June 2025. For the purpose of that hearing, I had a main bundle¹ running to 1,103 pages; a supplemental bundle of 31 pages (though it was not necessary to refer to that bundle during the hearing, nor is it referred to in this judgment); skeleton arguments from the Claimant and the Defendant; and an authorities bundle. During the hearing I had the benefit of oral submissions from counsel for the Claimant and the Defendant. I am grateful to them for the succinct way in which they advanced their arguments.

¹ References to which appear as "MB" followed by the page number in this judgment.

ALDERLEY PARK

4. Alderley Park is a name that has been given to an area of land to the South of Alderley Edge in East Cheshire. A plan of it appears as figure 2.2 in the Alderley Park Development Framework.



5. This is harder to read in black and white than in the original colour, but there are two particular points of note:
- 5.1. Symphony Park, the area to which the planning application relates, is to the North East corner of the area of land shaded in yellow in the original which is called “Parklands.”
 - 5.2. The area to the North of the site, shaded in purple in the colour version, which includes the restaurant, conference centre and bio hub is termed “Mereside.”
6. Alderley Park is the former home of AstraZeneca’s lead centre for cancer research. This was a significant location of employment, with around 7,500 jobs at its peak. However in 2012, AstraZeneca announced the intention to relocate the majority of its activities from Alderley Park to a site in Cambridge. In response, a taskforce comprising the leaders of Cheshire East and Manchester Councils, the Vice Chancellor of the University of Manchester and the then local MP expressed a vision to “*secure a vibrant and prosperous future for Alderley Park through its*

transformation to an independent, self-sustaining, world-class hub for life sciences acting as an anchor for the sector in the North West.”

7. Later, a company called Alderley Park Limited² acquired the site in 2014. A development plan was formulated by Alderley Park Limited and the Defendant (as the local planning authority), leading to the publication of the Alderley Park Development Framework in 2015. This envisaged the site as a base for life science businesses³. As the Defendant points out, the Development Framework referred to the development of parts of the site so as to provide capital funding for the proposed Life Sciences Park, though, as the passages cited in the Defendant’s skeleton argument at [18] demonstrate, that document was not specific as to how that funding was to be applied.
8. Alderley Park is in the Green Belt and therefore there are considerable restrictions on development. However, the Defendant, the relevant local planning authority, has developed a policy for the development of the land, known as LPS 61, “Alderley Park Opportunity Site.” That includes the development of part of the site for residential purposes, the proceeds of which are intended further to develop the Life Sciences Park. The outline grant of planning permission for the site in 2016 required the conclusion of a Section 106 Agreement by which a fund called the Alderley Park Reinstatement Reserve (“the Reserve”) was to be established, for the purpose of receiving the proceeds of planning developments which were conditional upon funding the development of the Life Sciences Park.
9. Mr Oglesby explains the Reserve in a little more detail in his witness statement:

“21. The Defendant, as local planning authority, has full scrutiny of the operation of the Reserve, as any proposed disposals of land in the Park have to be drawn to their attention (paras 3 and 4 of the First Schedule), the Defendant must be notified when disposals then take place (para 5 of the First Schedule), and the funds from the Reserve may only be expended in accordance with the proposals set out in a Reserve Report which has been approved by the Defendant (para 16 of the First Schedule).

22. These arrangements have underpinned the development and operation of the Park from June 2016 onwards, with some developments coming forward pursuant to reserved matters under the original outline permission (and so governed by the original section 106 agreement), and others coming forward pursuant to their own full planning permission (each of which has had its own section 106 agreement which includes the provisions relating to the Reserve). Since June 2016, some six land disposals have taken place to developers, and the land at [the Site]

² Alderley Park Limited is a joint venture between several bodies as explained in Mr Oglesby’s statement.

³ This history is taken in part from the Viability Assessment completed by Cushman & Wakefield dated September 2023 and referred to further below and in part from the witness statement of Mr Oglesby.

is the subject of a sale and purchase agreement between APL [Alderley Park Limited] and the Interested Party. ...”

10. At [29] of his statement, Mr Oglesby says that, prior to the Symphony Park development, around £73 million has been allocated to the Reserve, this being more than 25% of the overall monies spend on the park by Alderley Park Limited.

THE POLICY

11. The policy statement, LPS 61 is in these terms⁴:

“Alderley Park Opportunity Site

The council will support development on this site to create a life science park with a focus on human health science research and development, technologies, and processes, where criteria 1-5 below are met:

1. Development shall be:

- i. For human health science research and development, technologies and processes; or*
- ii. For residential (around 200 to 300 new homes) or other high value land uses demonstrated to be necessary for the delivery of the life science park⁽⁹⁶⁾ and not prejudicial to its longer term growth; or*
- iii. For uses complimentary to the life science park and not prejudicial to its establishment or growth for this purpose.*

2. Development shall be in accordance with the Alderley Park Development Framework.

3. Construction of new buildings for uses in criterion 1 above shall be restricted to the Previously Developed Land (PDL) on the site unless:

- i. very special circumstances are demonstrated to justify use of other land on this site outside the PDL; and*
- ii. an equivalent amount of PDL on the site is restored to greenfield status, the restored land should be of an equivalent or better quality than the greenfield land that is used, so there is no overall increase in the developed footprint.*

4. Development would not have a greater impact on the openness and visual amenity of the Green Belt and the purposes of including land within it than existing development.

⁴ See MB431. Footnotes are omitted with the exception of footnote 96 in paragraph 1(ii), which is referred to below.

5. Development shall preserve or enhance the significance of listed buildings, the conservation area and other heritage and landscape assets on and around this site. A Heritage Impact Assessment must be undertaken to determine the level of development that can be achieved.

Site Specific Principles of Development

- a. Contributions to education and health infrastructure.*
- b. This Local Plan Strategy site is expected to provide affordable housing in line with policy requirements set out in Policy SC 5 'Affordable Homes'.*
- c. Contributions towards improvements to Monks Heath crossroads.*
- d. The protected trees shall be retained and incorporated into any development.*
- e. A minimum of a Phase 1 Preliminary Risk Assessment for contaminated land should be carried out to demonstrate that the site is, or could be made, suitable for use should it be found to be contaminated. Further work, including a site investigation, may be required at a pre-planning stage, depending on the nature of the site.*
- f. A high quality of design will be required in all areas of the site.”*

12. Footnote 96 states:

“In the context of this policy 'demonstrated to be necessary' is envisaged as releasing funds to subsidise and thus enable the delivery of the life science park.”

13. The justification for the policy is stated in these terms in LPS 61:

“Justification

15.697 Although this site is designated as an existing employment site, the National Planning Policy Framework states that ‘policies should avoid the long term protection of sites allocated for employment uses where there is no reasonable prospect of a site being used for that purpose.’ Following the announcement by AstraZeneca of their plans to reduce the scale of their facility on this site to around 700 jobs by 2016, Cheshire East Council has sought to work alongside the company to maximise the potential of this site as a specialist employment facility. The council and AstraZeneca have a shared aspiration that the site should evolve from a single occupier site to a 'cluster' of life science businesses with a particular focus on human health science research and development, technologies and processes.

15.698 However, it is recognised that, in order to enable the delivery of this vision, it may be necessary to allow a wider range of uses on some areas of the site, without satisfying the requirements of Policy EG 3. In order to maximise the sites employment capability, alternative

uses must be restricted to those that have been demonstrated as either necessary for the delivery of the desired life science park and not prejudicial to its longer term growth, or complimentary to the life science park and not prejudicial to its establishment or growth.

15.699 The Alderley Park Development Framework has been developed to proactively guide any future development on the site. The site is subject to a planning application (15/5401M, registered on 30/11/15) for the demolition of a number of specified buildings, and a mixed use development.

15.700 For the avoidance of doubt this site remains within the Green Belt.

15.701 Any replacement and/or new sports provision should be in accordance with an adopted up to date and robust Playing Pitch Strategy and Indoor Sports Strategy and with Policy SC 2 'Indoor and Outdoor Sports Facilities'.

15.702 The site has potential for contamination to be present, therefore at least a Phase 1 Preliminary Risk Assessment for contaminated land needs to be carried out to ensure that any contamination that is present is subject to appropriate remediation.

15.703 A proposal needs to be put forward and agreed with Sport England that replaces the playing fields to an equivalent or better quantity and quality in a suitable location.

15.704 In line with the development framework, a high quality of design, together with a commitment to quality of materials, finishes, detailing and landscaping will be required, reflecting the unique characteristics of the site."

THE APPLICATION

14. The Interested Party had previously applied for permission to develop the site by the creation of 159 Extra Care units together with associated facilities and services, thereby creating a community for retired people. That application was refused by the Defendant by notice dated 17 March 2023.
15. The present application by the Interested Party was for permission to construct 139 Extra Care units together with associated facilities. It is described in the Planning Statement that accompanies the application in these terms:

"The Symphony Park proposal comprises an Integrated Retirement Community (IRC) model that will provide an environment where residents can enjoy living in a vibrant, engaging community where their comfort, safety, and wellbeing are of the highest priority and where they can enjoy meeting new friends and engaging in their hobbies and interests with like-minded people. Critically important is the ability to 'age-in-place' and enlist more help as

they get older when they may be able to do less than they once could. Care will be provided by Symphony Park and their delivery partner, tailored to each residents' requirements.”⁵

16. The Planning Statement refers to the Alderley Park Development Framework and says this of the scheme proposed in the application:

“In order to increase its capacity to deliver world class Life Sciences, and to improve its international competitive position, Alderley Park Limited have obtained planning permission for two new buildings at Mereside, which will be capable of housing new laboratories and associated Life Science office functions. It is estimated that the two additional Life Sciences buildings will deliver in the order of 1,600 new jobs once fully occupied, a further 80 customers on the Alderley Park site and an annual GVA of £185m.

A viability appraisal undertaken by CBRE has demonstrated that in the absence of alternative committed funding sources and without capital receipts from the sales of the residential land within the estate, delivery of the new build developments recently consented by the Council are currently unviable.

The Alderley Park Development Framework is clear that complementary, higher value uses would be necessary in the Park and this is also expressed in CELPS Policy 61. The co-relationship between the Life Sciences and Symphony Park extends to a fundamental enabling role which the capital receipt from the land sale following grant of planning permission for this Symphony Park application will provide.

In short, securing delivery of the Symphony Park scheme will help Alderley Park Limited continue to invest in the next critical phases of Life Sciences expansion. The increasing viability pressures and funding gap for delivering the next phase of development, emphasises the central importance of the Symphony Park land receipt.”

Thus, the application sought to engage with LPS 61 and, in particular, the need to show that the proceeds of development would lead to greater investment in the Life Sciences Park.

17. At Appendix VI, the Planning Statement includes what are termed “Section 106 Draft Heads”, clearly an indication of the proposed heads of terms of an agreement under Section 106 of the Town and Country Planning Act 1990 (by which planning obligations can be imposed on a development). Those heads include:

⁵ MB63.

“2. The capital receipt from the disposal of the Site shall be re-invested for the “Purpose” of delivering a Life Sciences hub at Mereside⁶, Alderley Park as contained in the Alderley Park Development Framework through the mechanics of the existing Alderley Park Reserve.”

18. The application was accompanied by a viability assessment report from Cushman & Wakefield dated September 2023⁷, from which I have quoted in dealing with the history of the site above. By way of its executive summary, that report describes the success of the site and the need for further accommodation, both for existing business and for potential new occupiers. The report notes the grant of permission for two new Grade A laboratory and office buildings in March 2023. The executive summary concludes:

- “
- *The current investment proposals for new Grade A space will allow Alderley Park to have a pipeline of lab space which will support the Government’s commitment to increase R&D outside of the Greater South East by at least 40% by 2030 and continue to play an important role in the Greater Manchester Life Science Hub - including the Greater Manchester Innovation Accelerator proposed through Levelling Up.*
 - *The viability gap on the two buildings that received planning permission in March 2023 has grown, increasing the importance of maximising the receipt from the last remaining residential development plot. The more that the receipt is reduced - via decreasing the number of units or increasing the contributions required from the scheme - the greater the viability gap will be that Alderley Park Ltd will need to engage with Cheshire & Warrington LEP to try to access Retained Business Rate to fill in order to be able to unlock future development.*
 - *The Symphony Park proposal provides the opportunity for an enhanced land receipt (above that which would be achieved via a sale to a housebuilder for general housing) which will be reinvested into the provision of modern laboratory space and for the benefit of sustaining Life Sciences and technology at Alderley Park.”*

19. The Viability Assessment looked at the proposed costs of the new buildings and concluded:

“4.25 Viability assessments on each of the proposed new buildings have demonstrated that they are not viable without cross funding support. For the purposes of testing the viability, it

⁶ During oral submissions, it was argued for the Claimant that this reference to Mereside was a specific reference to the laboratory and offices that were to be built, rather than a general reference to the Life Sciences Park. Since “Mereside” appears, from the plan referred to above, to be a reference to the areas in which the Life Sciences Hub is situated, I cannot attribute to the word the rather narrower meaning contended for by the Claimant.

⁷ Hereafter, “the Viability Assessment.”

was therefore assumed that the disposal receipt from the sale of the residential land could be used to cross fund the new development and to ensure that new floorspace could be delivered...

4.26 ... the analysis has been undertaken to determine the level of cross funding from a residential land receipt which would be required to achieve a nil land value. Any amount about a nil land value in the appraisal would therefore show the development to be viable from a financial perspective. The analysis, which is based on the appraisal inputs as outlined above., indicates for the office development to be viable a minimum capital receipt of £16m ... and for the labs to be visible a minimum capital receipt of £11.35m ... would be required. Therefore a minimum of £27.35m ... of additional capital would be required to enable development of the two new blocks.

...

4.30 Significant momentum has been achieved to date at Alderley Park. The disposal of the last remaining identified residential plot to Symphony Park will deliver an enhanced land receipt which will be used by Alderley Park Ltd to reduce the viability gap.

....

4.32. The viability appraisal demonstrated that without a capital receipt from the sale of the residential land within the estate the new build developments are currently unviable and even with cross funding from the land receipt they will still require additional funding.

....

4.33 Despite the success to Alderley Park, the cost of development compared to the rents mean that the delivery of new lab space is not viable and has become less viable since the original viability assessment was undertaken in 2022. This supports the ongoing, and increasing importance, of the need to maximise the value of the remaining residential site to cross-subsidise delivery of the commercial development. Even with this cross subsidy, Alderley Park Ltd will have to continue to explore the availability of grants to support the momentum of delivery and to ensure an available pipeline of affordable space to respond to occupier demands. However it must be acknowledged that given North Cheshire's wealthy residential population it is not a priority for national regeneration funding and whilst new sources of funding may become available to support economic growth there is no guarantee that Alderley Park would be eligible and waiting for potential sources of funding will not allow it to respond to current demand. It should also be noted that the delivery of new floorspace within Alderley Park will generate additional Business Rates which will be reinvested locally."

20. The Planning Statement referred to above picks up this part of the Viability Assessment, at [5.40], acknowledging that this shows that "the viability gap has now increased so significantly that even with a maximised receipt from the last remaining residential plot, this will only be able to

facilitate the partial delivery of the next phase of Life Sciences floorspace – namely the proposed laboratory space.”

THE DECISION-MAKING PROCESS

21. The decision to grant permission was taken by elected members of the Defendant local planning authority sitting in committee as the Strategic Planning Board on 28 February 2024. The material they considered included the Planning Statement and the Viability Assessment referred to above. They were provided with a Committee Report which summarised the application, with a stated recommendation that the application be approved subject to a Section 106 agreement being entered into and conditions being imposed on the application. The officer appraisal, forming part of the Committee Report, refers both to LPS 61 and to the Alderley Park Development Framework. Having noted the terms of [1(ii)] of LPS 61, set out above, the appraisal goes on:

“The key consideration in terms of the overall quantum should be whether this development is demonstrated to be necessary for the delivery of the life sciences park and not prejudicial to its longer-term growth.

The application confirms that an enhanced land receipt will be delivered from this site, which will contribute to filling the existing viability gap to deliver a new office development (minimum £16 million needed) and laboratory development (minimum £11.35 million needed) at Alderley Park. In terms of compliance with Criterion 1(ii) and footnote 96, it is clear that the proposals would release funds to subsidise the delivery of the life sciences park. A key question however will be whether these funds do actually “enable delivery of the life sciences park,” as required under footnote 96.

Reviewing the application documentation, it was not clear how much of the existing funding gap would be filled by the land receipt from this scheme and it is not clear what other opportunities exist to fill the remaining funding gap. If the land receipt from this scheme fills a substantial proportion of the funding gap and there are other realistic opportunities to fill the remaining gap to enable delivery of the offices and laboratory space, then the scheme can be seen as “enabling delivery of the life sciences park.” However, if the land receipt fills only a small part of the funding gap and there is no realistic prospect of alternative sources of funding to fill the remaining gap, then it seems uncertain that the office and laboratory development would come forward, even with the land receipt from this scheme. If this is the case, then it would be questionable whether the scheme can be considered to “enable the delivery of the life sciences park” as required under the policy.”⁸

⁸ See MB305.

22. The appraisal later considers the economic case for the development, noting the possibility of the creation of around 1,600 new jobs at Alderley Park (and an additional 32 jobs elsewhere) “*if the approved laboratory and office space development can be brought forward*”. The officer raises the point that, “*If the contribution to benefits associated with the delivery of the laboratory and office scheme approved on Mereside (22/3512M) is a significant factor in the decision to approve this current development and it would not be approved without the cross subsidisation benefits set out, it is requested that the LPA consider how to secure this cross subsidisation, if necessary via an obligation set out in a S106 agreement, similar to that attached to the original outline permission for residential development on this site.*” The appraisal goes on, “*the land sale from the development subject to this application are needed to cross fund the life sciences development already approved, which would deliver much needed state of the art facilities for which Alderley Park is renowned, and the economic benefits this would bring.*”⁹
23. The appraisal concludes that “*The original policy allocation in the Local Plan was to support life science development at Alderley Park. This development will make an important contribution to that overall policy objective and given the above changes; it is therefore recommended for approval.*” The recommendation for approval proposes a Section 106 Agreement including a mechanism for the reinvestment of the profit from the development “*in the life science development via the Alderley Park Reinvestment Reserve.*”
24. The witness statement of Mr Oglesby annexes at MB634ff the transcript of the Defendant’s Strategic Planning Board meeting on 28 February 2024. Both the Claimant and the Defendant have drawn my attention to parts of that transcript. I do not intend to quote those here but I note in particular the passages extracted in the Claimant’s skeleton argument at [17] and in the Defendant’s skeleton argument at [32].
25. The Claimant draws attention to the fact that the actual level of funding that it was anticipated would be provided by the Symphony Park development was not identified within any of the material before the committee, nor was any question asked about it during the meeting. In fact, within his witness statement Mr Oglesby identifies the sum to be allocated to the Reserve consequent on the anticipated profit from the land disposal as £11,622,908¹⁰, close to the figure identified in the Viability Assessment as the minimum capital sum needed to fund the laboratory but well less than the sum needed for the offices.

⁹ See MB326.

¹⁰ See MB520

26. At the time of that approval, the members only had before them a high level version of the proposed Section 106 Agreement. This was entered into on 28 August 2024. It provided for the “net receipts” as defined to be paid into the Reserve for the purpose of:

“delivering a Life Sciences hub at Alderley Park as defined in the Alderley Park Development Framework including (but not limited to):

- (a) remodelling the facilities at Alderley Park so that they are capable of multiple occupancy;*
- (b) maintaining and managing facilities on Alderley Park which are contributing to, or potentially would contribute towards, the future use and operation of a Life Sciences hub at Alderley Park;*
- (c) delivering the New Facilities;*
- (d) covering ongoing overhead costs associated with the matters in item (b) including the costs of holding space vacant for the purposes of attracting occupiers and the costs of subsidising immediate amenities including but not limited to retail and hospitality provision, conferencing and sports and recreation provision at Alderley Park;*
- (e) providing new facilities and/or infrastructure needed to facilitate a Life Sciences hub at Alderley Park;*
- (f) providing funding to occupiers of Alderley Park (other than those just occupying a Dwelling as such) either directly or through funds which are made available to occupiers of Alderley Park, including the provision of equity, grants, soft loans or other forms of investment to or in businesses seeking to locate to Alderley Park;*
- (g) providing business support, facilities and other business incubation services to occupiers and potential occupiers;*
- (h) marketing and promoting Alderley Park as a Life Sciences hub, and*
- (i) providing other works on, or undertaking activities in relation to Alderley Park which the Owner acting reasonably considers will contribute towards the achievement of a Life Science hub at Alderley Park.”*

27. The “New Facilities” referred to in the Section 106 Agreement are defined as *“the proposed new laboratory and office accommodation at Alderley Park which have been granted planning permission within the planning reference 22/3512M or such other planning application or applications as might update or replace them.”*

THE CHALLENGE TO THE DECISION

28. The Claimant's Claim Form identifies three grounds of challenge to the grant of planning permission:

28.1. the Defendant acted unlawfully by failing to identify/obtain the level of cross funding that would be provided by the scheme;

28.2. the Defendant's conclusion that the scheme accorded with LDS 61 was irrational;

28.3. the Defendant failed to give adequate reasons for its decision.

29. In opening, counsel for the Claimant stated that the central issue in the claim was that the members who approved the application were not informed as to the level of cross funding that the scheme would generate for the benefit of the Life Sciences Park, specifically the laboratory and offices referred to in the passage from the Planning Statement cited above. The Defendant disputes that the true meaning of the policy is that any planning development needed to generate sufficient funds for a specific scheme within the Life Sciences Park. Alternately, it argues that the Court should exercise the power under Section 31(2A) of the Senior Courts Act 1981 to refuse relief.

30. In granting permission, Mr Ockelton said this:

"Everything depends on the true meaning of the policy, which is a matter for the court. In my judgment it is clearly arguable that 'subsidise and thus enable' means more than merely subsidise. The ordinary meaning of 'enable' is to make possible or provide the means for. In context the word arguably means not merely that the proceeds will go towards the science development, but that development will (or at any rate can) actually take place as a result of these proceeds being available – rather than that it is more likely to happen, the more money is available. If that is right, compliance with the plan would arguably involve assessing whether the proceeds were sufficient to meet an identified shortfall."

31. The Claimant describes this as an accurate summary of the central issue in the case. Equally, the Defendant's submissions turn largely on the proper interpretation of the policy. It is therefore necessary to consider its true meaning as a preliminary to determining the individual grounds of challenge. However, for reasons identified later in this judgment, I do not consider that the true construction of the planning policy alone determines this application. It is necessary also to consider the Defendant's decision-making process and reasoning in light of the true meaning of the policy and the information before the decision-making committee.

THE LAW

32. It is common ground that the interpretation of a planning policy is an objective question of law for the court to determine, reading the policy in accordance with the language used and in its proper context.
33. The Claimant helpfully sets out six other relevant principles of law of particular relevance to challenges to planning decisions in its skeleton argument from which the Defendant does not demure:
- 33.1. A planning officer's report must not materially mislead members;
- 33.2. It is the duty of the planning officer reporting to members not simply to avoid giving misleading advice but also to give sufficient information and guidance to enable members to reach a decision applying the relevant criteria;
- 33.3. A member taking the decision must both ask the right question and take reasonable steps to ascertain the relevant information in order to answer it correctly;
- 33.4. The manner and intensity of the inquiry made by the decision-maker can only be challenged on grounds of irrationality;
- 33.5. A planning decision must be accompanied by intelligible and adequate reasons or to put the same point the other way round, the decision-maker must not commit "*an error of reasoning which robs the decision of logic*¹¹."
- 33.6. If there is no evidence to support a conclusion upon which a decision depends then it will to that extent be irrational.
34. The Defendant draws attention to the proper approach to be taken to a planning officer's report as summarised by Holgate J (as he then was) in *R (on the application of Nicholson) v Allerdale Borough Council* [2015] EWHC 2510 at [11]:
- "(i) In the absence of contrary evidence, it is a reasonable inference that members of the planning committee follow the reasoning of the officer's report, particularly where a recommendation is accepted;*
- (ii) The officer's report must be read as a whole and fairly, without being subjected to the kind of examination which may be applied to the interpretation of a statute or a contract;*
- (iii) Whereas the issue of whether a consideration is relevant is a matter of law, the weight to be given to a material consideration is a matter of planning judgment, which is a matter for the planning committee, not the court;*

¹¹ See Sedley J in *R (on the application of Balchan) v Parliamentary Commissioner for Administration* [1996] 1 PLR 1.

(iv) *'An application for judicial review based on criticisms of the planning officer's report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken' per Lord Justice Judge (as he then was) in Samuel Smith Old Brewery (Tadcaster) v Selby District Council (18 April 1997).*

(v) *In construing reports, it has to be borne in mind that they are addressed to a "knowledgeable readership," including council members 'who, by virtue of that membership, may be expected to have a substantial local and background knowledge.'* (R v Mendip District Council ex parte Fabre (2000) 80 P CR 500 per Sullivan J, as he then was).

(vi) *'The purpose of an officer's report 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 plan 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.'* (emphasis added) (Sullivan J in the Ex parte Fabre case at page 509).

(vii) *Likewise in Morge v Hampshire County Council [2011] UKSC 2 at paragraph 36, Baroness Hale of Richmond said: 'Democratically elected bodies go about their decision-making in a different way from courts. They have professional advisers who investigate and report to them. Those reports obviously have to be clear and full enough to enable them to understand the issues and make up their minds within the limits that the law allows them. But the courts should not impose too demanding a standard upon such reports, for otherwise their whole purpose would be defeated...'*

Again, these principles are not in dispute.

35. Some attention was paid before me to the proper approach to be taken to the contents of discussion between committee members, an issue considered by Dove J in R (on the application of Village Concerns) v Wealden District Council [2022] EWHC 2039. Having cited the judgment of Singh LJ in R (on the application of The Mid Counties Cooperative Ltd) v Forest of Dean District Council [2017] EWHC 2056 at [58], [59], and [61] as to the caution to be exercised in approaching the task of evaluation the discussions of the individual members of a body which takes a decision collectively, Dove J emphasised the importance of commencing any evaluation

of the decision making process by a planning body by looking at the written advice that members received. At [53] he stated:

“In my view it is, as set out in the authorities referred to above, necessary to approach the transcripts of the committee discussions with realism as to their nature, being different in kind from the carefully formulated contents of an officers' report, and bearing in mind the context in which they occur, namely a discussion or debate seeking to forge a collective decision. As the authorities suggest, there is a danger of focussing too closely on the contributions of one participant in the process. Similarly, in my view, there is a danger in forensically examining the ex-tempore remarks of a person responding to the discussion, as Mr Robins¹² was, doing his best to engage constructively with members' concerns, but not attempting to provide a comprehensive and precise supplementary report in oral form.”

36. Section 31(2A) of the Senior Courts Act 1981 provides:

“(2A) The High Court—

(a) must refuse to grant relief on an application for judicial review, and

(b) may not make an award under subsection (4) on such an application,

if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.”

37. It is clear from the terms of this subsection that the court must focus on the degree of likelihood that the outcome for the applicant would have been no different but for the conduct that gives rise to the claim, so that, if satisfied that it is “*highly likely*” that the outcome would not have been substantially different, the court is obliged to dismiss the challenge.

38. In *R (on the application of Widdington Parish Council) v Uttlesford District Council* [2023] EWHC 1709 at [122], Mr Dan Kolinsky KC, sitting as a Deputy High Court Judge, summarised the principles referred to by Ms Kate Grange KC sitting in the same role in *R (on the application of Cava Bien) v Milton Keynes Council* [2021] EWHC 3003 at [52] in these terms:

“a. The burden is on the Defendant and Interested Parties – see (i)

b. The highly likely test sets a high hurdle – see (ii) and (iii)

c. The Court must undertake an objective assessment of the decision making process – looking back at the situation at the date of the decision – see (v), (ix).

d. The Court should be cautious about straying into the forbidden territory of assessing the merits of the planning decision under challenge – see (xi) and (xiii).”

¹² A planning officer who answered members' questions in that case.

I equally apply those principles.

INTERPRETATION OF THE POLICY

39. I start by considering the proper interpretation of the Defendant's planning policy, LPS 61. It is the Claimant's case that the Interested Party's application was based on the contention that it was funding the construction of the Laboratory and Offices on the Life Sciences Park for which planning permission had been given in March 2023 (the "*New Facilities*" as defined in the Section 106 Agreement) by funding in whole the shortfall of £27.35 million indicated in the Viability Report. Such funding would only meet the terms of the policy if it enabled the result that it was envisaged to fund. The necessary construction of the policy is that the use of the word "enable" in footnote 93 supposes that the result of the funding that is made available by the grant of planning permission in the particular case brings about the result which it is intended to fund. Thus it could not accord with the policy if it either funded the Life Sciences Park generally or if it contributed towards the funding of a specific project such as the construction of the New Facilities but that whether that project would come about was unknown because it was dependent on other funding sources that had not yet been secured or at least identified. As counsel for the Claimant put it in opening, the observations made by Mr Ockelton on granting permission correctly encapsulate the issue.
40. The Claimant notes that this is consistent with the construction of the policy in the Officers' Appraisal, where reference is made as noted above to the need to establish that "*the land receipt from this scheme fills a substantial proportion of the funding gap and there are other realistic opportunities to fill the remaining gap to enable delivery of the offices and laboratory space*" in order to satisfy the need for the scheme to be "*enabling delivery of the life sciences park.*"
41. The Defendant in contrast argues that it is sufficient to comply with this policy that the funding that it will realise will support the development of the Life Sciences Park as a whole. This is consistent with the reference in paragraph 1(ii) of LPS 61 to a development that is "*demonstrated to be necessary for the delivery of the life sciences park.*" In this sense, the development of the Life Sciences Park is "*enabled*" within the meaning of footnote 93. It is also consistent with how the Defendant has applied the proceeds of previous developments through the mechanism of payment of the proceeds of residential development to the Reserve which is then applied for the development of the Life Sciences Park generally.
42. The Defendant rejects the contention that the alleged interpretation of the policy within the Officers Report (which in any event is disputed) could be relevant to the court's determination of the objective meaning of the policy. The Defendant further denies that the paragraph upon which the Claimant relies in the Officer's Report bears the meaning that the claimant seeks to put on it in any event. The author here was merely providing examples of how the requirements of LPS

61 might be met. It was not purporting to limit the application of the policy. This much is apparent from the very fact that the officers report recommends that the application be granted notwithstanding the fact that the Interested Party had not demonstrated (or even purported to demonstrate) that the grant of planning permission for Symphony Park would lead to the funding gap for the development of the laboratory and offices being met. It would be perverse to think that the author of the report (or in due course the members) had interpreted the policy in the manner relied on by the Claimant yet had gone on to approve the application even though there was no evidence of compliance with that policy.

43. In examining the true construction of the policy, I agree with the Defendant that the Officers' Appraisal cannot be relied upon in support of a particular interpretation. Rather the determination of the true meaning of the policy is an objective matter for the court to determine. It is therefore strictly speaking unnecessary for me to consider whether the author of the report was meaning to interpret the policy in the manner contended for by the Claimant, although there appears force in the argument that this must be so given that the actual recommendation appears to assume that the scheme would fund the new facilities.
44. In my judgment, there is nothing inherent in the use of the word "*enable*" meaning that a development that complies with this policy must necessarily bring about a stated development. The use of the word "*enable*" clearly connotes that the result of the funding will be that something can be brought about and the use of the word "*delivery*" indicates that what must be brought about is related to forwarding the activities of the Life Sciences Park. However, had the authors of the policy meant it only to permit development that led to some particular type of outcome (such as the construction of facilities within the Life Sciences Park), they could have drafted it in a way that clearly achieved that end. They have not done so.
45. In any event, a policy that limited the development of site to the funding of specific projects would clearly be problematic if the policy limited the grant of permission to schemes that could be demonstrated either of themselves to provide the entire funding for a particular project or to make up an existing funding gap so that the project could proceed. To limit the grant of planning permission to such schemes would result in the possibility that a particular scheme might be approved if it completed the funding for a project but could not be approved if it merely started the funding for it. Such a policy might be rational but it would involve a somewhat surprising limit on what could properly be approved for planning purposes and is a construction of the policy that would require clear language of a kind which simply has not been used here.
46. The alternative construction is that, so long as it could be shown that the destination of the profits from a residential development scheme was for the "*delivery*" of the Life Sciences Park, in the broad sense of ensuring that the Life Sciences Park thrived, there was no need to link it to the

completion of an identified project. In this case, the Defendant contends that this end has in fact been achieved through the use of a Section 106 Agreement that ensures that the profits from the grant of planning permission and disposal of land go to the Reserve fund.

47. In my judgment, this is the better reading of the policy. On its true construction the policy did not require the building of some particular construction in consequence of the money realised by the grant of planning permission for Symphony Park. It would be sufficient that the funds that were realised contributed in some meaningful way to the operation and/or development of the Life Sciences Park. The terms of the Section 106 Agreement in my judgment clearly establish that the destination of the monies here falls within that meaning.
48. I therefore reject the contention that, because the monies realised by the development of Symphony Park was not likely to be sufficient to fund the laboratory and offices (or indeed any identified part of them), the development fell outside the scope of LPS 61.
49. I turn from considering the proper construction of the policy to addressing the individual grounds of challenge. My judgment on the proper construction of LPS 61 resolves Ground 2 in the Defendant's favour, since it cannot be said that the development in fact fails to comply with the policy. However, for reasons identified below, Grounds 1 and 3 are not necessarily determined simply by my ruling on the construction issue.

GROUND 1

50. The core of the Claimant's argument on Ground 1 is that it was not possible for the Defendant properly to conclude that the scheme accorded with LPS 61 without first identifying what cross funding would be available as a result of the approval of the application. I have identified above that, on its true construction, the policy does not require the cross funding to be sufficient to meet the cost of development of the laboratory and offices, or at least the shortfall that was identified in the Viability Assessment. Accordingly, to that extent the first ground of challenge could not succeed.
51. However, Ground 1 goes further than this. If the Defendant can be shown in fact to have made its decision on the basis that the proposed development would fund the shortfall for the construction of the laboratory and offices identified in the Viability Assessment, the failure to identify that this was not in fact so would lead to the position identified by the Claimant in its principles of law set out at paragraph 33 above that it was incumbent upon the planning officers to provide relevant information and that a decision taken without the relevant information would be robbed of rationality. If members took the decision to grant permission in the belief that LPS 61 was met because the cross funding from the scheme was sufficient to meet the shortfall identified in the Viability Assessment, the failure to obtain and present information that showed

this was not the case would render the decision unlawful on rationality grounds. The mere fact that the Defendant could, on my construction of the policy, have reached the same decision on the ground that the development scheme funded delivery of the Life Sciences Park generally through contribution to the Reserve would not legitimise a decision taken on the grounds that the development would in fact fund a specific project at the Life Sciences Park. Accordingly, it is necessary to look in detail at the basis upon which the decision was taken.

52. I have reviewed the transcript of the members' meeting. This is a classic example of a situation in which it would be unwise to place any great emphasis on questions asked by members and replies given to those questions, for the reasons identified by Singh LJ and Dove J in the passages cited above. There is a real danger that this might give an unfair picture that does not truly represent the joint view of those who reached the decision. On the other hand, the Officers' Appraisal in their report to the committee gives a clear steer as to how it is said that the development might comply with the policy LPS 61. The passages cited at [21] and [22] above show a clear indication that the justification for granting permission, insofar as the Defendant's Officers' Appraisal is concerned was the economic benefit of the scheme, is bringing forward the construction of the laboratory and offices for which permission has already been granted. The authors of the report might have drawn attention to the shortfall in cross funding but argued that the potential for that shortfall to be met from other sources coupled with the economic benefit of the construction of the laboratory and offices was sufficient to justify the grant of permission. This however is simply not how the appraisal report reads. Rather, it is expressed in terms that, if the cross funding from the development of Symphony Park is achieved by the grant of permission, the laboratory and offices will be built and thereby the economic benefit will be achieved. In particular, the assertion that *"the land sale from the development subject to this application are needed to cross fund the life sciences development already approved, which would deliver much needed state of the art facilities for which Alderley Park is renowned, and the economic benefits this would bring"* at MB326 is only consistent with the author arguing that granting permission will bring about this benefit. Moreover, the fact that the author has earlier postulated that without such benefit being achieved, the grant of permission might not comply with LPS 61, would be liable to lead any reasonable reader (of whom the members are archetypal examples) to the conclusion that the cross funding was sufficient.
53. However, as the evidence before this court makes clear, the cross funding is nothing like sufficient to achieve that end. A rational decision-making process, looking at this issue, would therefore have involved either refusing permission because the cross funding was not shown to be sufficient or granting permission in any event notwithstanding the insufficiency of cross funding to ensure completion of the construction of the laboratory and offices. However, neither the Officers'

Appraisal nor any other material either before the members or relevant to their decision indicates that this was their reasoning.

54. I have borne in mind the Defendant's argument that there is clear evidence that the members were aware of the role of the Reserve in previous schemes and that its involvement would be central to ensure that the profits from the proposed scheme would be re-invested in the development of the Life Sciences Park, as elicited by Councillor Edwards from the Interested Party's agent in the exchange referred to in the Defendant's skeleton argument at [32]. That reassurance was likely to have been important to the members but the provision of the reassurance is at least as likely to have been relevant to the mechanism by which the profits were to be directed to the development of the Life Sciences Park as they are consistent with the idea that members believed that the profits would simply fund development in general rather than funding the specific scheme for the construction of the new laboratory and offices. Indeed, had Councillor Edwards been working on the assumption that profits were to go into the general fund rather than be destined for the specific development referred to in the Officers' Appraisal, one might wonder why he did not ask further questions, whether of Mr Halman or others, to establish the relevance of the members being told that the funds were going to a specific scheme. This exchange does not materially support the proposition that Councillor Edwards, or members generally, were reasoning that permission might properly be granted for this scheme even if the profits were not sufficient to meet the funding shortfall for the proposed laboratory and offices.
55. I am equally not persuaded by the Defendant's argument that the fact that members can properly be taken to a knowledgeable audience who would have known from the context that the application of the profits to the Reserve was a sufficient basis to conclude that permission can and should have been granted here. There is nothing in the material to contradict the possibility that one or more members would have been minded to make a different decision had they known that the profits from the Symphony Park development would not have funded the laboratory and offices to completion. Members might have taken their decision on the basis that the development should be approved because it would lead to an identified development in the Life Sciences Park, namely the construction of the laboratory and offices. Such a conclusion was not one that they could rationally have reached based on the information with which they were presented and in the absence of specific information as to the amount of the funding shortfall. They might equally have taken the decision they did if they had known or suspected that there would have been shortfall, but such a decision would have required rationalisation in a manner which simply cannot be made out on the material before the court.

56. It follows from this analysis that the Defendant's decision to grant permission cannot be said to meet the test of rationality because there is no material from which it can be determined whether they reached their decision to grant permission on grounds that are lawful.
57. Notwithstanding this legitimate ground of challenge, my analysis that the Defendant might have been able to grant permission for the Symphony Park development notwithstanding the funding shortfall and the terms of policy LPS 61 means that I am bound to consider the Defendant's alternative argument that the court should refuse relief under Section 31(2A) of the Senior Courts Act 1981.
58. However, the difficulty in this contention lies in the absence of any evidence that the members were aware of the inability of the Symphony Park Development to fund the shortfall in the funding for the construction of the laboratory and offices. As I have emphasised, it would have been at least arguably rational for the members to conclude that planning permission should be granted because the scheme would part fund the proposed development of the Life Sciences Park. The witness statement of Mr Oglesby gives particular material that, had it been before the members, might have supported the conclusion that permission should be granted because the scheme would raise around enough to fund the laboratory construction, even if it could not in addition contribute to the funding of the offices. But in each case whether those decision were the correct exercise of planning judgment would involve consideration of issues such as how any shortfall might be met, whether the construction of the laboratory without the offices was a viable development of the Life Sciences Park and what was to happen in the event that the laboratory and offices were not constructed.
59. Mr Malcolm's witness statement, relied on by the Defendant, asserts at [9] that it is highly likely that, if members had had before them the information in Mr Oglesby's statement as to the likely profits from the Symphony Park development, they would have reached the same conclusion to grant planning permission on the ground that the funding would have been sufficient to complete a single identified part of the proposed development.
60. The Claimant draws my attention to the caution that a court should exercise in admitting and relying on evidence that is prepared and served after the date of a planning decision that is subject to challenge – see the judgment of Singh LJ in *R (on the application of Sahota) v Herefordshire Council* [2022] EWCA Civ 1640 at [18]. This is particularly the case where the later evidence is an after the event exercise in looking at what decision would have been taken in different circumstances, where a witness's opinion as to what would have happened in hypothetical circumstances is liable to be affected by the desire to justify what actually happened in different circumstances.

61. I am sceptical about Mr Malcolm's evidence in this respect. I am not persuaded that it can truly be called opinion evidence, in which case its admissibility might be doubted on other grounds. In any event, whilst I can see that he may be correct, this court simply does not have the material that is sufficient to judge those issues to the high standard required for the application of Section 31(2A). In those circumstances I cannot be satisfied that, even if the members had been aware of or had turned their minds to the actual cross funding that the scheme would have raised, they would nevertheless have granted permission.

GROUND 2

62. For reasons I have identified above, in light of my construction of policy LPS 61, Ground 2 is unarguable.

GROUND 3

63. In reality, Ground 3 is closely connected with Ground 1. It is not necessary for me to rehearse the parties' arguments in detail because, if it were shown that it was rational to reach the decision that Defendant did in respect of the application, the material to support that rationality would be the material that demonstrated the adequacy of reasoning; correspondingly given my finding that this was a decision that was not reached rationally because of the absence of reasoning that supports the decision, the ground of challenge is made out.
64. Section 31(2A) adds nothing in this respect since, for the reasons identified in respect of Ground 1, it is either sufficiently clear that the Defendant would have made the same decision even if required to reason it properly, in which case relief would be refused on the same reasoning as that on which it would have been refused on Ground 1, or, as I have in fact found to be the case, this it is not sufficiently clear, in which case Section 31(2A) cannot be invoked.

CONCLUSION

65. It follows from my judgment that the Claimant makes out Grounds 1 and 3 of its challenge to the Defendant's decision and this is not a case in which the Court can properly refuse relief by applying Section 31(2A) of the Senior Courts Act 1981. Accordingly, I will quash the Defendant's decision.
66. The parties have agreed an order since receiving a draft of this judgment.