



Neutral Citation Number: [2026] EWHC 1166 (Admin)

Case No: AC-2025-CDF-000138

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15<sup>th</sup> May 2026

**Before:**

**THE HONOURABLE MR JUSTICE KIMBLIN**

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**Between:**

**MUDFORD PARISH COUNCIL**

**Claimant**

– and –

**SOMERSET COUNCIL**

**Defendant**

– and –

**ABBAY MANOR GROUP**

**Interested Party**

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**Andrew Parkinson** (instructed by Richard Buxton Solicitors) for the **Claimant**

**Killian Garvey** (instructed by Somerset Council Legal Services) for the **Defendant**

**Matthew Henderson** (instructed by Clarke Wilmott LLP) for the **Interested Party**

Hearing date: 28<sup>th</sup> April 2026  
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**Approved Judgment**

This judgment was handed down remotely at 10:30 am on Friday 15<sup>th</sup> May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

MR JUSTICE KIMBLIN

**Mr Justice Kimblin:**

**Introduction**

1. The Interested Party applied to the Defendant ('the Council') for outline planning permission for:

“Development of a Sustainable Urban Extension to comprise up to 765 dwelling (Use Class C3), 65 bed care home (Use Class C2), employment land (Use Class E), retail units (Use Class E (a)(b)(c)(i)(ii)(iii) and hot food takeaway), community building (Use Class F2) health care facility (Use Class E(e)), primary school playing pitches, landscaping, open space and drainage infrastructure, access and associated highway works”.

2. The Council granted planning permission by decision dated 15<sup>th</sup> July 2025 (“the Decision”). The site is at Primrose Lane, Mudford, Yeovil in Somerset. The Claimant took an active interest in the site and objected to the scheme, including by making representations as to securing the delivery of the non-residential aspects of the scheme.
3. There is a collateral challenge to a related permission for engineering works. The parties agree that the outcome of the challenge to that permission is collateral on the outcome of the challenge to the Decision.
4. With permission to apply for judicial review granted by order of HHJ Jarman KC dated 25<sup>th</sup> September 2025, the Claimant advances a single ground which arises from the local plan policy which allocates the site.
5. Policy YV2 of the South Somerset Local Plan 2006-2028 (“the Local Plan”) allocates land for housing, employment, a school, a health centre and a neighbourhood centre ('the policy'). The policy says that the allocation 'should provide' that development. In stating the policy in terms that the allocation 'should provide' the specified development, does the policy mean that the result should be that each type of development is delivered or does it mean that planning permission should be granted accordingly and it is a matter for the market as to whether or not each element of the scheme is actually built? The Claimant's case is that the Council erred in concluding that this policy was complied with. The planning permission enabled residential development to be delivered without the delivery of the land for economic development (i.e. the employment land being built out) and without the neighbourhood centre being built.
6. The questions which arise are:
  - i) Whether there is truly an issue of policy interpretation for the court to undertake, or whether the Claimant's real complaint is about the application of the policy; if so
    - a) What does '*should provide approximately 2.58 hectares of land for economic development*' mean;
    - b) What does '*should provide a neighbourhood centre*' mean;

- ii) Were members given legally accurate advice on the interaction between the policy and the planning permission, along with its conditions and legal agreement?

## **Background**

### *Policy*

7. Policy YV2 of the Local Plan states, so far as material:

“The Yeovil Sustainable Urban Extensions should be located in two areas to the south and north-east of the town and should provide the following:

...

Approximately 2.58 hectares of land for economic development;

Approximately 765 dwellings;

One primary school;

A health centre;

A neighbourhood centre; and

Landscape mitigation to address:

Potential massing effects across the site’s northward face;

and

Potential visual dominance at the site’s edge and skyline.

The Yeovil Sustainable Urban Extensions will be developed to the highest sustainability objectives and garden city principles, subject to viability.”

8. The “sustainability objectives” referred to in the policy are explained in the supporting text. One objective is that the development will result in *“1 job per household provided on site – this enables a new sustainable community less controlled by the need to use the car.”* The monitoring indicators for the policy include the *“amount of employment land delivered in the Yeovil Sustainable Urban Extensions”*.
9. In respect of the Yeovil Sustainable Urban Extensions, the aspiration is *“to develop enough employment land to provide a job for each economically active resident, roughly one per dwelling. This land is location specific, so it all needs to be provided. 5.16 hectares are required in total.”* Standards of sustainable development are set out, including that homes should be within a 10-minute walk (400m) neighbourhood services. The objective is to create sustainable communities.

*The Application and the Permission*

10. The site has a long planning history, in part because of restrictions on the grant of planning permission to protect the conservation features and integrity of a European site, often referred to as the need to obtain nutrient neutrality. The application was validated by the local planning authority in June 2014.
11. An extensive and detailed report was prepared by officers of the Council for a meeting of the Council's Planning South Committee, which took place on 22<sup>nd</sup> October 2024. Under the heading "Officer Response" the officer's report responded to the concern which had been expressed by consultees, namely "*Fear that the community facilities will not be built. What guarantees are there that they will be delivered?*". The officer's response and advice was:

"The delivery of facilities on sites is a constant concern.

The Community Hall is being pursued as a standalone project led by the community. All other sport, play and recreation facilities have triggers for delivery by the developer.

It is a matter of interpretation as to whether Policy YV2 requires the developers to build the Neighbourhood Centre or simply seek planning consent for it and allocate land. Taking into account the past resolution and the way policy is typically written and through dialogue with a Strategic Policy colleague the s106 Heads of Terms will not include an obligation that the developer has to build part of or the whole NP by a certain trigger. These matters are often led by the market and the demand from end users. It is felt that the new homes at Wyndham Park and the Up Mudford site combined should attract sufficient commercial interest. The view has been taken to seek a Marketing Strategy to ensure this commercial interest is achieved. Commercial developers will also look to what other facilities exist nearby on Mudford Road/St Michaels Avenue, Cavalier Way, Runnymede Road and St Johns Road, plus footfall generated by the school, Community Hall and employment land. Members may take a different interpretation of YV2 and seek an element or the whole of the Neighbourhood Centre to be constructed within a certain timeframe but this would likely see resistance from the applicant.

There is a significant set of planning obligations proposed at part of this development viewable at Appendix 1."

12. The officer report goes on to consider compliance against Policy YV2. Against the policy criterion to "*provide*", "*Approximately 2.58 hectares of land for economic development*", the officer report states as follows:

"The revised Land Budget and Density Plan (Dwg No. 2002 Rev O) shows 2.7755 hectares (ha) of land for economic development purposes, of which 1.9805ha is allocated for Class E uses (i.e. former B1 uses).

Other land uses contributing towards economic development and providing alternative forms of employment include:

- 0.6121ha for a care home (Class C2): and

- 0.695ha for health clinic/surgery, day nursery/creche

and retail uses (Class E) within the neighbourhood centre, of which retail uses (Class E(a)(b)(c) and food take-away (sui generis) comprise 0.1ha/1000 m2.

Whilst land uses are to be approved the physical delivery of the care home, neighbourhood centre and employment units will be led by market demand, with triggers set for marketing strategies to be agreed.

Conclusion – The proposal meets the requirement (see s106 Heads of Terms - Appendix 1 for triggers).”

13. Against the policy criterion to “provide” “a neighbourhood centre”, the officer report states as follows:

“Land for a new (approx. 0.659ha) Class E neighbourhood centre is proposed centrally within the site and close to existing dwellings. In addition to the health centre, the neighbourhood centre will provide 1000 m2 of floorspace for retail/professional services (see s106 Heads of Terms- Appendix 1 for triggers).

Conclusion – The proposal meets the requirement. Whilst land uses are to be approved the physical delivery of the neighbourhood centre will be led by market demand, with triggers set for a marketing strategy to be agreed.”

14. Overall, the officer report did not identify a conflict with the policy requirement to provide employment land or a neighbourhood centre; or indeed with the “on-site” 1 job per household sustainability objective.
15. For these reasons, officers concluded that there was compliance with Policy YV2 on the basis that land for the non-residential uses would be marketed in accordance with the provisions of a legal agreement.
16. On 21<sup>st</sup> October 2024, solicitors acting on behalf of the Claimant wrote to the Council, responding to the officer report, as follows:

“15. In short, this delivery approach is not a lawful interpretation of the policy as it provides no certainty that the jobs and neighbourhood centre – features central to a sustainable urban extension – will come forward being dependent on marketing strategy at some time in the future. In the context of a proposed development of up to 765 new homes, this is effectively saying that most, if not all, of those new homes may be occupied before

any jobs are available on the land allocated for employment uses, if at all, since the trigger is a marketing strategy.

16. The same error is made in relation to the delivery of the neighbourhood centre with the trigger being a marketing strategy to be submitted by 500 occupations. This policy interpretation falls materially short of any certainty for the delivery of the neighbourhood centre.”

17. Mr Fox, the planning officer, addressed this in his presentation to Members at the Planning Committee meeting, as follows:

“So with regard to that issue, one of the issues or two of the issues raised were about employment land and local centre delivery and what policy YV2 requires and what YV2 doesn't require, and it is a matter of interpretation. And there is commentary in my report which has obviously prompted the responses from Mudford Parish Council, but the questions that I'm left asking myself are, does policy YV2 require a developer to construct employment buildings and run businesses to create 765 jobs? My view is it doesn't.

The policy there, the northeast area, approximately 2.58 hectares of land for economic development, I think that's fairly clear. Now, what probably doesn't help is that the policy then does go on to say about the intention to provide one job per dwelling. So the slightly open goal that the Local Plan provides for objectors is to say, well, how do you deliver those jobs if you don't deliver the employment land and actually deliver buildings on it?

And that's a really difficult answer – that's a difficult question to answer, because the policy says land and then the policy says jobs, and I've tried to address this in my report by painting the wider picture about job creation, not least from the construction itself and the fact that we have secured the 2.58 hectares of land, it will be serviced and it will be accessible.

Therefore, what further can the developer reasonably do? If Members were so inclined to require the developer to go further, then what could that involve? Building speculative employment units? That still doesn't get you jobs. That takes you a bit closer, but it doesn't have to provide the jobs. Incentivising businesses to operate in those units? Possibly, but both of those things come at a cost: to build the units and to incentivise businesses to go there. And when you look at the viability section of this report, you can see why that \_\_\_\_\_ a viable and attractive option. And if Members took the lead that Mudford Parish Council are suggesting you take, then other 106 obligations would have to be significantly reduced.

Where else in the District are we mandating developers build employment uses buildings? What types of building do they build? They build very small units, they build offices. You know, these things are led by the market for a reason. The market knows what it wants. People trying to build things speculatively often find that they are holding vacant premises for a while because it doesn't quite fit. So the conclusion on the economic land issue is that policy YV2 is satisfied with the provisions set out in the Section 106 head of terms in appendix 1.

Then we go on to say, ask ourselves, does policy YV2 require the developer to physically construct and operate a primary school, to build and operate a health centre and construct and operate retail buildings, i.e. the neighbourhood centre? Well, no, it doesn't do that either, does it? And again, that's what Mudford Parish would allow – would lead you to think this policy requires. There's no other policy in the Local Plan that requires developers to build local centres, neighbourhood centres, district centres. These things are always typically left to the market to deliver, because again there is a sweet point where someone making a commercial decision will \_\_\_\_\_ whether they want to invest their money into building a facility, a shop, because they think they're going to make money from it.

The danger here is that the Council and Members are lured into mandating the applicant build the neighbourhood centre, build a shop, before the market is there to serve it and therefore all the good work in terms of the master planning is undone by trying to operate a shop that has no footfall, because the chimney pots haven't been installed around it and it's a big building site for the next five or so years.

Again, the letter from the Environmental Lawyer employed by Mudford Parish Council seems to say that this application should be refused because the health centre isn't being proposed. Well, again, I go back to the same point. We could all walk away from this with a victory today by mandating the developer build a health centre, but you aren't going to get an appointment there because there aren't going to be any doctors there. The ICB, who are the body that we now consult with on matters relating to GP surgeries and that sort of care sector, are best placed to inform us what they require and in this instance, rightly or wrongly, they have asked for any cash contribution to go towards the expansion of existing premises in the locality. If they had said one of those surgeries want to relocate to a new site and therefore, noting the policy that there's a health centre that could be offered up, then fine, but we're not there. Ironically, these things normally go around in circles and we may well end up there in the future, but we'll be using the monies that this development has secured in the Section 106 heads of terms.

Similarly, the primary school, it says approximate – one primary school. Well, we don't need a primary school because there's one on the other side of the hedge being extended, so technical compliance with the policy is one thing, but the one thing that the letter is missing is common sense. And what this master plan sets out is a very clear plan as to how all these facilities are going to be provided.

So in short, Officers have interpreted policy YV2 not to require the developer to deliver these facilities, certainly not to deliver them early doors. There is a commercial decision to be made for any future developer as to whether they wish to proceed, but they will typically be informed by the end users telling them now is the right time and that time is usually later than anyone in this room would like. But that's the market, that's how these things are done. And I think it will be a victory to get a shop there at all in the end, given what's happened with Wyndham Park, all the representations that have been made over the last decade, all want a shop, all want a community facility, and this application sets a path for the delivery of all of those things.

So does forcing the developer to build or indeed allowing the market to deliver undermine the intended sustainability objectives? Possibly, but again, the ingredients are all there. What we cannot do as a Council is manipulate the market without the involvement of some sort of financial incentive, whether that be a free building, free rent, and I go back to my point, all of that needs to be financed by something and that's coming off other social infrastructure elements in the Section 106 heads of terms. So we feel we've got the right balance. As I said, the off-site delivery of GP facilities and a school is as requested by the ICB and the Education Authority. It's technically contrary to the policy, but fulfils the requirements, i.e. to provide a GP surgery and school capacity. That's what we're here to do. All good planning.”

18. The permission was granted after completion of an agreement pursuant to s. 106 Town and Country Planning Act 1990 which included obligations to:
- i) construct an access to and from the employment land before 700 dwellings within the Development have been occupied;
  - ii) not to occupy or cause or permit the occupation of more than 500 dwellings within the Development until marketing details have been submitted to the Council for the employment land;
  - iii) use reasonable endeavours to market the employment land. Once the marketing has commenced, the marketing must continue until the final dwelling within the Development is occupied;
  - iv) undertake similar marketing of the land for the neighbourhood centre.

19. The decision notice for the planning permission included Condition 3:

“The development hereby approved shall not be commenced until a written phasing programme (showing the phasing of the development; the anticipated timings for the submission of Reserved Matters Applications, and the anticipated commencement of each phase), has been submitted to and approved in writing by the Local Planning Authority. The phasing plan shall explicitly reference the phasing of delivery of Public Open Space and footway and cycle linkages within and to the boundaries of the site. Any subsequent changes to the agreed programme of phasing shall be submitted to and approved in writing by the Local Planning Authority.

Reason: As required by Section 92(2) of the Town and Country Planning Act 1990.”

20. Condition 5 requires that the development is carried out in accordance with the approved plans, which includes the ‘land budget and density plan’. That plan shows the neighbourhood centre and employment land.

### **The Witness Statements**

21. Mr Simon Fox is the Council’s Lead Planner, is very experienced, and was the officer who presented the application and report to the Committee. He was the case officer when the application was received by the Council in 2014. His witness statement, dated 10<sup>th</sup> December 2025, is wide ranging.
22. He characterises the scheme as good development, despite the Claimant’s attempts to stymie it over a sustained period, by any means possible, he says.
23. He then turns to a set of planning justifications for the approach which the Council adopted. These include the interaction between demand for the non-residential elements, viability and affordable housing provision. He explains that “*The Claimant’s assumption that you build a shop and it magically operates is misplaced.*” He gives details of competing retail outlets in the vicinity. In respect of the employment land, Mr Fox explains the challenges of building employment units on a speculative basis.
24. Judith Gannon is a Fellow of the Institute of Chartered Surveyors and the Managing Director of the Interested Party. She signed a witness statement dated 8<sup>th</sup> December 2025. She explains the purpose of the evidence to be the explanation of how the property market functions and the practicality of the proposals to deliver the employment land and neighbourhood centre. She explains the s. 106 agreement as the mechanism by which the commercial uses are facilitated.
25. Ms Gannon gives evidence as to the use of a viability appraisal of the timing and costs of delivery of the development. She explains the role and cost of mitigation of the off-site effects of phosphates contained in the foul drainage from the development and a range of other off-site works. Ms Gannon explains her view of the likely costs implications of the Claimant’s case, if it is accepted, and the impact on scheme viability.

26. Mr Parkinson contended that the witness statements were impermissible retrospective reasoning: *R (on the application of United Trade Action Group Ltd) v Transport for London* [2022] R.T.R. 2 at [125]. Mr Henderson's answer was that this material was properly admissible evidence of the factual consequences which were known to the Council at the time of the decision to grant planning permission. Sensibly, no party made any significant oral submissions on the witness statements.
27. I have disregarded both Mr Fox's and Ms Gannon's witness statements. Paraphrasing Sullivan J., as he then was, in *Newsmith Stainless Ltd v SoS Environment* [2001] EWHC 74 (Admin) reported at [2017] PTSR 1126 at [9], in a challenge to the grant of planning permission, there is rarely a justifiable need for a witness statement which goes further than to exhibit the decision and the relevant material on which the decision was made. There may be a need for some additional explanatory material so that the court may understand a feature of the case, for example a map, plan or photograph. That is likely to be uncontroversial. However, anything further which does not have specific and contemporaneous relevance to a legal issue on which the case turns is likely to be problematic for one or a combination of reasons. As Mr Parkinson identified, there is a risk of introducing new reasons and explanation. That is generally impermissible. The court is concerned with the decision, not a subsequent explanation of the decision. Further, the court is not concerned with the merits of the decision. Such evidence is likely to stray into the merits, as has happened in both of these witness statements. Moreover, such evidence adds to the material which the parties and the court have to engage with, adding to costs and the scale of the case which has to be decided. See further *R (Flaxby Park Ltd) v Harrogate Borough Council* [2020] EWHC 3204 (Admin) per Holgate J., as he then was, at [18] and the cases which he cites.
28. Large parts of the witness statements in this case are a mix of opinion and argument. Argument is for submission by the advocates, in writing and orally. It is an unhelpful blurring of roles and functions for witnesses to argue the case.
29. Opinion evidence which is produced after the decision under challenge has been made, particularly if it is from the decision maker, is unlikely to be relevant to the legal issues in the case in the Planning Court. Moreover, permission is required, which I would have refused: CPR 35.4.
30. A properly admissible witness statement is likely to commence by explaining the legal issue to which it is relevant. For example, it may be necessary to provide evidence of procedural error or conduct, including as to fairness. There may be a need to show that information which should have been obtained and, or, considered, was not. If there is a ground of review which requires a proportionality assessment, then the court may be assisted by evidence which supplements that which was before the decision maker. But in the large bulk of cases before the Planning Court, anything beyond a witness statement which formally exhibits the relevant contemporary materials is likely to add to cost and detract from the true focus of the legal issues.
31. On the question of costs, I would order that the costs of and occasioned by Mr Fox's and Ms Gannon's witness statement not be allowed.

## Submissions

32. Mr Parkinson submits, on behalf of the Claimant, that Policy YV2 of the Local Plan sets out the balance of uses that will be acceptable in principle on the Site. “Approximately 765 dwellings” are acceptable provided that all of the other elements set out in the policy are also delivered.
33. This accords with the planning objectives which it seeks to achieve: *Tesco Stores Limited v Dundee City Council* [2012] P.T.S.R. 983 at [18], per Lord Reed, and; Dove J., as he then was, in *Canterbury City Council v SSCLG* [2019] P.T.S.R. 81 at [23 (iii)]. Those four *Canterbury* principles summarise the interpretative task in this way:

“i) The question of the interpretation of the planning policy is a question of law for the court, and it is solely a question of interpretation of the terms of the policy. Questions of the value or weight which is to be attached to that policy for instance in resolving the question of whether or not development is in accordance with the Development Plan for the purposes of section 38(6) of the 2004 Act are matters of judgment for the decision-maker.

ii) The task of interpretation of the meaning of the planning policy should not be undertaken as if the planning policy were a statute or a contract. The approach has to recognise that planning policies will contain broad statements of policy which may, superficially, conflict and require to be balanced in ultimately reaching a decision (see *Tesco Stores* at paragraph 19 and *Hopkins Homes* at paragraph 25). Planning policies are designed to shape practical decision-taking, and should be interpreted with that practical purpose clearly in mind. It should also be taken into account in that connection that they have to be applied and understood by planning professionals and the public for whose benefit they exist, and that they are primarily addressed to that audience.

iii) For the purposes of interpreting the meaning of the policy it is necessary for the policy to be read in context: (see *Tesco Stores* at paragraphs 18 and 21). The context of the policy will include its subject matter and also the planning objectives which it seeks to achieve and serve. The context will also be comprised by the wider policy framework within which the policy sits and to which it relates. This framework will include, for instance, the overarching strategy within which the policy sits.

iv) As set out above, policies will very often call for the exercise of judgment in considering how they apply in the particular factual circumstances of the decision to be taken (see *Tesco Stores* at paragraphs 19 and 21). It is of vital importance to distinguish between the interpretation of policy (which requires judicial analysis of the meaning of the words comprised in the

policy) and the application of the policy which requires an exercise of judgment within the factual context of the decision by the decision-taker (see *Hopkins Homes* at paragraph 26).”

34. The officer’s reasoning effectively ran: we cannot force the developer to build the employment land; therefore, we cannot require the employment land to be delivered; therefore, the policy is complied with even if 765 homes come forward without it. This reasoning omits to consider the need for the planning permission to deliver all of the development which comprises the allocation in order to comply with the policy.
35. Mr Garvey submits, on behalf of the Council, that this case is not truly a case which rests on policy interpretation. He is supported in that regard by Mr Henderson, on behalf of the Interested Party. He submits that the Claimant is, in reality, concerned about the application of policy. The distinction between interpretation and application has now been canvassed repeatedly in the cases: *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] UKSC 37; [2017] 1 WLR 1865 per Lord Carnwath at [26]; *Mead Realisations Ltd v SSLUHC* [2024] EWHC 279 (Admin), at [72-73] per Holgate J. as he then was, and see his tests of a true misinterpretation case, requiring the claimant to identify (1) the policy wording said to have been misinterpreted, (2) the interpretation of that language adopted by the decision-maker and (3) how that interpretation departs from the correct interpretation of the policy wording in question: see *Trustees of the Barker Mill Estates v Test Valley BC* [2016] EWHC 3028 (Admin); [2017] PTSR 408 at [84].
36. How the neighbourhood centre and employment land should be provided and how the sustainability objective of 1 job per household is achieved may be questions which arise for the planning judgement of the Council but determining how this is achieved is application of policy, not its interpretation.
37. That planning judgement was to use the s.106 agreement to secure the marketing of the non-residential elements. Through market demand, they would be provided. Mr Garvey emphasises that there is no challenge to the rationality of that approach.
38. He submitted that the decision to discharge Condition 3 will necessarily have to determine what parts of the scheme come forward and, significantly, in what order. Thus, in addressing the phasing of the scheme, the Council could ensure that the employment land and/or neighbourhood centre need to be provided in phase 1 prior to later phases, including housing, were to be constructed. Condition 3 answers the Claimant’s concern.
39. Mr Henderson adopted Mr Garvey’s submissions, save in respect of Condition 3. Mr Henderson submitted that it was not necessary to consider Condition 3 because the essential issue in the case is whether Policy YV2 requires the Council to go further in its approach to the employment land and the neighbourhood centre.
40. Policy YV2 requires any development to include the six components which are set out in the Policy, but nothing further is required and there is nothing to support the concept of a restriction on one form of development pending the delivery of another. It was open to the Council to consider whether the delivery of one of the identified components within Policy YV2 was so critical to the acceptability of the Development that its

delivery should be secured by some mechanism, but this was a matter of judgement for the Council.

41. Alternatively, Mr Garvey submits that if there is an interpretative exercise to be undertaken, then the Claimant's interpretation is unduly prescriptive and unsupported by the ordinary meaning of the contested phrase.
42. The phrase '*should provide the following*' could not require delivery of all aspects of the scheme (including the neighbourhood centre and employment land), because the grant of permission does not compel the construction of all parts of a multi-unit development: *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30 at [52-53] - if completion of the whole scheme was a condition precedent to the permission, it would never be permissible to begin development: "*Unless the condition subsequent was precisely defined, it would also be unclear when or whether it would apply in a situation where, for example, the developer ran out of money or simply decided to stop construction work but it remained physically possible to complete the development.*"

### **Discussion**

43. As the efficient and focussed oral argument showed, the resolution of this case is to be derived from four sources:
  - i) The policy
  - ii) The reasons for the decision, which are to be found primarily in the officer's report, and are supplemented by the transcript of the committee meeting
  - iii) The permission
  - iv) The legal framework
44. Here, the legal framework is captured in the four *Canterbury* principles at paragraph 33 above. I draw particular assistance from: (a) the role of context and purpose, and; (b) reading the development plan, and the policies within it, as a whole.
45. As to context, the allocation policies articulate the vision for the forward planning of a planning authority's area with the particularity which addresses the circumstances of the site and district. A policy for the allocation of land for development is to be read with its function in mind: see *Canterbury* principles (ii) and (iii). The same approach is to be applied to other policies if their type and function is apparent. Examples will include development management policies for specific control of development detail, or, in contrast, broadly framed policies of ambition and strategic direction.
46. As to reading the whole, policies in a local plan are set out and drafted so that the reader knows which parts of the text are the policy and which parts of the text describe and explain the policy. Per Richards LJ in *R (Cherkley Campaign Limited) v Mole Valley DC* [2014] EWCA Civ 567 at [16]

“...when determining the conformity of a proposed development with a local plan the correct focus is on the plan's detailed

policies for the development and use of land in the area. The supporting text consists of descriptive and explanatory matter in respect of the policies and/or a reasoned justification of the policies. That text is plainly relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy. I do not think that a development that accorded with the policies in the local plan could be said not to conform with the plan because it failed to satisfy an additional criterion referred to only in the supporting text. That applies even where, as here, the local plan states that the supporting text indicates how the policies will be implemented.”

47. The focus is therefore on the policy, read as a whole, and understood in the context of the plan as a whole.
48. The first contest between the parties is whether this case is one of policy interpretation or policy application.
49. The two contentious elements are the allocations of employment land and for the neighbourhood centre, which I have considered separately. I accept that there are competing interpretations which are properly arguable as to what ‘should provide’ means in the policy. The parties have advanced different meanings of these words in this policy context, and it is for the court to decide as a matter of law. However, I also accept that there will remain a range of development management options and judgements which a planning authority might reasonably deploy in order to give effect to the policy, whichever meaning is legally correct.

#### *Employment land*

50. Firstly, I address the policy as it relates to the employment land. It will be recalled that the issue is: what does ‘*should provide approximately 2.58 hectares of land for economic development*’ mean?
51. As officers advised members, the terms of the policy were to provide employment land, in contrast to provision of buildings for employment uses. That advice was correct and contains no legal error because the policy goes no further than the provision of employment land without any limit on the nature or type of employment development. It is plainly an allocation which gives policy support for a specific use of land, namely employment uses. An application for a use other than employment on that land would be contrary to the policy. All that the permission in this case did was to grant permission for the employment use which is allocated, along with provision of highways access.
52. The policy responds to the identified need for employment land and the view which the Council took as to the appropriate location to provide the land. Read in the context of the supporting text, there is no policy intention to promote the delivery of speculative development, i.e. built development for employment uses with no identified occupier at the time of construction. The supporting text as to delivery of employment development and the creation of sustainable urban extensions (summarised at

paragraphs 8 and 9 above) does not change the meaning of the policy from its clear terms as to the provision of employment land. Rather, the supporting text serves to explain the purpose and expectation of the allocation of employment land, and the sustainability of the co-located uses.

53. Moreover, the employment land may be put to employment uses either with or without built development, having regard to the definition of development: s.55(1) of the 1990 Act. The employment element of the policy can be distinguished from the residential and the neighbourhood centre uses in that the employment use does not necessarily require the erection of buildings. Further, the policy sets a specific requirement for the number of dwellings, which is a parameter which influences the extent of built development.
54. I therefore conclude that officers correctly interpreted the policy so far as it related to employment land. However, even if that were not so, I would refuse relief for three reasons. Firstly, there is no policy or other basis on which to find that either the residential or the employment use must come forward in a particular order. The employment land may be taken up for development first, or the residential development may be implemented before there are any employment uses, or they may come forward in overlapping and simultaneous ways. The Claimant's argument proceeds on the premise that the residential development will proceed first and that it must be restrained in some way unless and until there is employment development. That is not a feature of the policy.
55. Secondly, I note the terms of Condition 3. This is a phasing condition which provides the Council with control over the number of phases of development and their sequencing. The result is that the Council has reserved to itself the ability to approve a scheme for the development of the sustainable urban extension which accords with its policies and vision as to what comprises a sustainable form of development, including as to the mix of uses, co-location and practical interaction.
56. Mr Parkinson submitted that Condition 3 is to be read consistently with the advice given by officers in the officer report. That submission is inconsistent with *Trump International Golf Club Scotland Limited v The Scottish Ministers* [2015] UKSC 74; [2016] 1 WLR 85, per Lord Hodge who addressed the proper approach to the interpretation of conditions at [34]. A reasonable reader of Condition 3 would read the condition in the context of the description of development, the other conditions and the requirement to proceed in accordance with the approved plans. The natural and straightforward meaning of Condition 3 is that the Council retains full control of phasing and would apply its policies to the discharge of that condition.
57. Thirdly, this is a multi-unit scheme. The development is to be undertaken in accordance with the approved plans (Condition 5). One effect of the judgment of the Supreme Court in *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30; 1 WLR 5077 is that variation from that which was approved could not be on a piecemeal basis. The scope for variation, such as developing employment land for residential use, is regulated accordingly.
58. These three features mean that the permission leaves the Council with the controls which address the Claimant's concerns. The decision to discharge Condition 3, in due

course, will have regard to the policy. To quash the permission would make no practical difference.

59. The Claimant does not contend that the application of the policy was irrational. It is not said that the marketing mechanism which is secured via the s. 106 agreement is an unlawful application of the policy. The Claimant is correct not to pursue such an argument. The provision of access and the requirement to market are a rational means of providing the employment development which the plan anticipates.

### *Neighbourhood Centre*

60. Secondly, I address the policy as it relates to the neighbourhood centre. It will be recalled that the issue is: What does '*should provide a neighbourhood centre*' mean? The question which was addressed by officers was essentially whether the terms of the planning permission should require the construction of the neighbourhood centre at a defined trigger point on the assumption that implementation of the residential development would commence first.
61. The policy that the development should provide the neighbourhood centre is a reference to built development rather than to the provision of land. The neighbourhood centre would provide services and facilities for the use and benefit of residents of the sustainable urban extension. This is clear from the fact that policy is for a sustainable urban extension, in accordance with the highest sustainability objectives and following garden city principles, namely an interlocking framework of uses and community benefits. It is evident that six specified elements of the development are an integrated development which together comprise a sustainable development. That is the intention of the policy.
62. The planning permission is for the entirety of the allocation. Such a permission would be compliant with the policy if it provided for the six elements of development. 'Provides', in respect of the neighbourhood centre, means that centre has been constructed and is in use by or before the completion of the residential development which it would serve. The policy anticipates that the result is an extension to the urban area of Yeovil which includes local provision of services and facilities in its neighbourhood centre. It is not a sensible reading of the policy to interpret 'should provide' to mean that land for the construction of a neighbourhood centre should be provided.
63. This interpretation may be tested against another part of the policy. It would not be tenable to interpret the policy as requiring the provision of land for 765 dwellings to mean that no dwellings are to be delivered. 'Provide' in this context means 'deliver'. It has the same meaning in respect of the neighbourhood centre.
64. However, I do not accept the advice which officers gave was incorrect to a material degree. Officers were responding to representations to the effect that a neighbourhood centre should be constructed by the developer of the site by a specified trigger point. That trigger would be a number of dwellings. This was not a debate as to the meaning of the policy but as to its application.
65. The question of whether a development proposal, including its conditions and the requirements of the legal agreement as to marketing, would provide a neighbourhood

centre is a judgement. It is a judgement to be based on the facts of the application, the prevailing circumstances, the evidence received from all sides and for the expertise and experience of the planning decision maker. There is no particular burden and standard of proof. Rather, the decision maker has to reach a judgement on whether or not the scheme will provide a neighbourhood centre.

66. If the decision maker takes a negative view on the prospects of that provision, i.e. delivery of a neighbourhood centre then it will then be necessary to decide whether there is compliance with the policy, or not. The weight to be given to the policy and the degree to which the proposal complies or not is a matter for the decision maker: *Tesco Stores v Secretary of State for the Environment* [1995] 1 WLR 759 at [764] per Lord Keith, namely that it is entirely for the decision maker to attribute to the relevant considerations such weight as he thinks fit, and the courts will not interfere unless he has acted unreasonably in the *Wednesbury* sense.
67. A decision maker who takes such a negative view may make other judgements, including whether to use the tools available to control development via conditions and, or, a legal agreement, and, or, through the reserved matters stage to address the concern as to delivery of the neighbourhood centre. One of the available tools is to link the provision and sequencing of elements of the scheme. However, whether or not to use such tools is a matter which is in the province of the decision maker and is not susceptible to legal challenge other than its rationality. If one or more of the specified elements were omitted from a proposal either wholly or to some significant extent, then it would be necessary for the decision maker to judge whether the proposal amounted to compliance with the policy or not.
68. In this case, officers advised members that the provision of the neighbourhood centre should be left to the market, without a related restriction on residential development. Officers did not need to be certain that the neighbourhood centre would be delivered. The Claimant's solicitors were in error in suggesting otherwise in their letter of 21<sup>st</sup> October 2024 (paragraph 16 above). Provided officers had a positive view on the prospects of delivery on the basis of the proposed approach, then officers were entitled to reach the judgement which they did, which was that there was, and would be, compliance with the policy.
69. Officers advised in terms such as "*Then we go on to say, ask ourselves, does policy YV2 require the developer to physically construct and operate a primary school, to build and operate a health centre and construct and operate retail buildings, i.e. the neighbourhood centre? Well, no, it doesn't do that either, does it?*" Officers were rebutting the proposition that the policy brought with it a requirement that any planning permission which relied on the policy was intended to require construction of the neighbourhood centre at a specified point. Officers were correct to advise as they did. Officers recognised that there was a difference between taking a view that marketing provisions gave sufficient prospects of the scheme being delivered as a whole and specific construction requirements which may damage the prospects of delivery of a comprehensive scheme.
70. When the officer's advice in the report to committee and given orally at the meeting is read in accordance with the principles summarised in *R (Mansell) v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314; [2019] PTSR 1452, per Lindblom

LJ at [42], I find that members were being advised to take a positive view of the prospects of delivery of the neighbourhood centre. The marketing provisions which were to be put in place satisfied the policy.

71. When a decision comes to be made on the discharge of Condition 3, it will again be open to officers and members of the Council to maintain such control as they then consider is necessary and consistent with policy.
72. For these reasons, I have concluded that officers neither misinterpreted the policy nor misled members of the Council.

### **Conclusion**

73. The claim is dismissed in respect of both the Decision and related permission for engineering works.
74. I am grateful to all counsel for their considerable and timely assistance in enabling the court to deal with the case as efficiently as possible.

**IN THE HIGH COURT OF JUSTICE**

**KING'S BENCH DIVISION**

**PLANNING COURT**

**BETWEEN:**

Claim ref: AC-2025-CDF-000138



AC-2025-CDF-000138

**THE KING (on the application of  
MUDFORD PARISH COUNCIL)**

**Claimant**

**and**

**SOMERSET COUNCIL**

**Defendant**

**and**

**ABBHEY MANOR GROUP**

**Interested Party**

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**ORDER**

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**BEFORE** the Hon. Mr Justice Kimblin

**UPON** hearing from Counsel for the Claimant, Defendant and Interested Party

**IT IS ORDERED THAT:**

1. The claims for judicial review are dismissed.
2. The Claimant shall pay the Defendant's costs, in the sum of £10,000 (inclusive of VAT) within 14 days of the date of this Order.
3. Permission to appeal is refused.

**Signed: Mr Justice Kimblin  
15<sup>th</sup> May 2026**