

**Case Name:** *Greenfields (IOW) Ltd, R (On the Application Of) v Isle of Wight Council* [2024] EWHC 2107 (Admin) (23 August 2024)

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**Commentary:** This was an unsuccessful judicial review by Greenfields (IOW) Ltd (“the **Claimant**”) of a decision by the Isle of Wight Council (“the **Defendant**”) to grant of conditional planning permission for 473 dwellings.

### *Background*

The original application for planning permission was made in 2019.

The application was first referred to the Defendant’s Planning Committee in July 2021, who resolved to grant conditional permission. At the time of the Committee meeting, there were several complaints about how the meeting was conducted. One Councillor whose ward was within the development site (who usually chaired the Planning Committee) had written an objection to the application. Two other Councillors were making public comments about the application, and the developer became concerned about these. The chair of the Planning Committee for the application had spoken to the relevant Councillors prior to the meeting, with issues of predetermination raised. Another Councillor had missed a small part of a site visit and was told he would not be able to vote at the Committee Meeting. Legal action was threatened following the Committee meeting and Councillors sought to have the application re-determined by the Committee.

Following further comments from Natural England, the application was back on the agenda in 2023 and the original officer’s report was appended with a further report which recommended conditional approval with amended heads of terms for the s106 following the Natural England comments. A committee meeting was held in April 2023 and notice to grant conditional planning permission was issued on 4 August 2023. The Claimant appealed the decision to grant.

### *Grounds & Judgment*

#### *Grounds 1-3*

The first three grounds related specifically to the conduct prior to and during the 2021 Planning Committee.

**Ground 1: The meeting of the Defendant’s planning committee in July 2021 was procedurally improper and/or unfair which vitiated the eventual grant.**

It was found that it was procedurally improper to exclude a Councillor from attending

and voting after missing some of the site visit. However, one Councillor (who had objected to the proposal) being excluded was not a procedural irregularity, as based on the evidence and the advice that was given to the Councillor, there was a danger that they would be seen as having predetermined the application.

Whilst a procedural irregularity was found, in its closing remarks, the Court found that to the extent there are criticisms of the procedure at the July 2021 meetings, these had been overtaken by events and the April 2023 committee meeting resolving to grant constituted proper process with which the court should not interfere.

**Ground 2: The grant was vitiated by the appearance of bias and/or the exercise of functions for an improper purpose.**

This ground related to various claims against the Councillor who chaired the meeting. None of the claims supported a finding of bias or that he proceeded on an improper purpose. Whilst it is likely he was predisposed in favour of the development (given its affordable housing), there was no clear indication of predetermination. The Committee chair was clear the proposal could only be refused on planning grounds, and whilst Councillors opposed to the development found being continually told this principle humiliating, it was remarked that this is a tension that can arise between democratic process and the obligation on councillors to implement planning policies.

**Ground 3: The Defendant failed to publish a draft and a completed S106 in breach of Article 40(3)(b) of the Town and Country Planning (Development Management Procedure) Order 2015.**

Whilst this was a breach of the statutory requirement, there was no prejudice from the failure to publish the draft or final S106 agreement. There were two reasons for this, first, the S106 agreement had not been requested by the Claimant prior to their pre action letter before claim and second, the heads of terms in the present case were set out in the officer's report and published on the website and this was enough to achieve substantial compliance.

Grounds 5 & 4

Both of these grounds related to a section 106 financial contribution for highways improvements and the Court first dealt with Ground 5.

**Grounds 5: The Defendant materially misled officers by relying on a planning obligation as mitigating an impact of development.**

At the 2021 Committee meeting, the developer was to make a financial contribution towards highway junctions improvement following of a review of the area. A review

never took place, and the ultimate S106 agreement had an obligation for a financial contribution towards junction improvements. It was argued that to the extent the Defendant relied on the financial contributions towards highways improvements without there being any suitable junction designs that would mitigate the impacts of new developments in the area, it acted irrationally or inexplicably. The Court found a formal review is not the only way that this could be done, but in any event the approach which the officers took in calculating the amount of highway contribution was based upon costings of schemes of potential highways improvements and was not irrational.

**Ground 4: The Defendant unlawfully deferred consideration of whether a planning obligation met the legal tests until after the grant**

The Court found the calculation of the financial contribution was reasonably related in scale and kind to the development, which involved a judgment as to the extent of that contribution on the available evidence. It was clear the definition for the contribution allowed for other highways schemes coming forward in the future, but provided that any such scheme must be compliant with regulation 122 of CIL. On this basis, the Court found Ground 5 was not made out.

Given the above, the claim was dismissed.

*Case summary prepared by Jack Curnow*