**IN THE HIGH COURT OF JUSTICE** **Claim No. CO/5690/2016**
**QUEEN'S BENCH DIVISION**
**PLANNING COURT**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**BETWEEN**

**THE QUEEN**
**On the application of DR ANNA HOARE**

**Claimant**

**-v-**

**THE VALE OF WHITE HORSE DISTRICT COUNCIL**

**Defendant**

**(1) OXFORDSHIRE COUNTY COUNCIL**
**(2) FARINGDON TOWN COUNCIL**

**Interested Parties**

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**SUMMARY OF JUDGMENT**

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1. Judgment in this case was handed down by John Howell QC, sitting as a Deputy Judge of the High Court, on 7th July 2017. The claim was heard in the High Court over two days on 14 – 15th June 2017. This summary of the judgment has been prepared by Hugh Flanagan, junior counsel for the Vale of White Horse District Council. It should be noted that the full judgment of the court is the only authoritative version.
2. The claim was brought by Dr Anna Hoare, a local resident. It was a claim for judicial review of the decision of the District Council of 16th September 2016 to accept modifications to the draft Faringdon Neighbourhood Plan recommended by the Independent Examiner, Mr Andrew Ashcroft, and to proceed to a referendum on the Neighbourhood Plan.
3. The referendum was subsequently held on 24th November 2016, in which the Neighbourhood Plan was approved by 944 of the 1,038 residents of Faringdon who

voted. The Neighbourhood Plan was made by the District Council on 14th December 2016.

4. The claim's focus was on Policy 4.5B of the Neighbourhood Plan. That policy seeks to safeguard Wicklesham Quarry for employment uses following completion of quarrying and restoration activities on the site and to support such development on it, provided that there is a demonstrable need, no other suitable site closer to the town centre is available and certain other conditions are met.

5. The were four principal grounds of claim, all alleging that the District Council's decision to accept the modifications proposed by the Examiner and to proceed to referendum was unlawful.

6. The **first** ground alleged that Policy 4.5B of the Neighbourhood Plan concerns a "county matter", i.e. a matter reserved to the County Council, which is a form of "excluded development" that cannot lawfully form part of a Neighbourhood Plan.[1] The specific type of excluded development relied upon by the Claimant was that which concerned "the carrying out of operations in, on, over or under land, or a use of land, where the land is or forms part of a site used or formerly used for the winning and working of minerals and where the operations or use would conflict with or prejudice compliance with a restoration condition or an aftercare condition".

7. The court rejected the ground of challenge. The Claimant was wrong to suggest that the Neighbourhood Plan could not safeguard Wicklesham Quarry for employment use simply because it was a former minerals site that is subject to restoration and aftercare conditions. Only development which would conflict with or prejudice compliance with such conditions was excluded. The policy did not provide for such development, because it supported development only after the land had been restored and steps required in the approved restoration and aftercare scheme had been completed.

8. The **second** ground alleged that the District Council's conclusion that the Neighbourhood Plan met the "basic conditions" (which such a plan must meet) was flawed because the District Council erred in treating Wicklesham Quarry as "previously developed land" for the purposes of the National Planning Policy Framework. The court held that the District Council did erroneously treat the Quarry as "previously developed land". However, the court further held that this was not a material error in that it did not invalidate the Council's conclusion that the relevant basic condition was met, namely that "having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make" the plan.[2] Accordingly, this ground failed.

9. The **third** ground alleged that the District Council's conclusion that the Neighbourhood Plan met the "basic conditions" was flawed for the further reason that the District Council could not lawfully be satisfied that the Neighbourhood Plan was

[1] The relevant exclusion is provided for by s.38B of the Planning and Compulsory Purchase Act 2004 and Schedule 1(1)(h) of the Town and Country Planning Act 1990.
[2] Schedule 4B to the Town and Country Planning Act 1990.

in general conformity with the strategic policies contained in the development plan. The adopted development plan at the time consisted of the saved policies of the Vale of White Horse Local Plan 2011 and the saved policies of the Oxfordshire Minerals and Waste Local Plan 1996.

10. The court held that the Council was entitled to conclude that Policy 4.5B was in general conformity with conservation and landscape policies of the Local Plan 2011 and relevant policies of the Minerals and Waste Local Plan 1996. The court did hold that the Council erred in failing to recognise that Policy 4.5B was in conflict with Policy GS2 of the Local Plan 2011 (a locational policy). However, the court further held that even if the Council had recognised this conflict, it was highly likely that the District Council would still have concluded that the Neighbourhood Plan was in general conformity with the strategic policies of the development plan. On that basis, the court refused relief in the claim, that is to say the court refused to award the Claimant any remedy.

11. The **fourth** ground alleged that the District Council's conclusion that the Neighbourhood Plan met the "basic conditions" was flawed for the reason that the District Council ought to have concluded that the Neighbourhood Plan breached obligations under EU law concerning strategic environmental assessment.[3] The court rejected this ground of challenge, holding that the Sustainability Appraisal produced in respect of the Neighbourhood Plan was a compliant environmental report for the purposes of EU law and also properly considered reasonable alternatives.

12. A final point arose in respect of the fact that the claim had been brought only against the Council's decision to accept the modifications and proceed to referendum, and not against the actual decision to make the Neighbourhood Plan. This gave rise to the question of whether relief should be refused because the Claimant was now too late to bring any challenge to the making of the Neighbourhood Plan. The court held that it was not necessary to determine this issue because the court had already decided that relief must be refused in any event, for the reasons given above.

13. In overall summary, therefore, only one of the Claimant's complaints was held to be well-founded, but the court held that it was highly likely that the District Council would have reached the same conclusion in any event, such that relief on the claim was refused.

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**7th July 2017**

[3] In particular Directive 2001/42/EC and the Environmental Assessment of Plans and Programmes Regulations 2004.