



Neutral Citation Number: [2024] EWHC 1008 (Admin)

Case No: AC-2023-LON-002622

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 30 April 2024

**Before :**

**Mr James Strachan KC sitting as a Deputy Judge of the High Court**

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**Between :**

**THE KING**  
**-on the application of-**  
**ALEXANDER JAMES WARREN WYNNE**

**Claimant**

**- and -**

**VALE OF WHITE HORSE DISTRICT COUNCIL**

**Defendant**

**(1) BOTLEY AND NORTH HINKSEY PARISH  
COUNCIL**  
**(2) 4<sup>th</sup> OXFORD SCOUT GROUP (An  
Unincorporated Association and Registered Charity  
No. 267799)**

**Interested  
Parties**

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**Mr James Wynne (In person) for the Claimant**  
**Ms Emmaline Lambert (instructed by Vale of White Horse DC) for the Defendant**

Hearing date: 1 February 2024  
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**Approved Judgment**

This judgment was handed down remotely at 3.00pm on 30 April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Mr James Strachan KC sitting as Deputy Judge of the High Court**

## **Introduction**

1. This is a renewed application for permission for the Claimant to bring a challenge by way of judicial review to a decision of the Vale of White Horse District Council (“the District Council”) given by notice dated 26 July 2023.
2. By that notice, the District Council granted full planning permission subject to certain conditions (reference No. P22/V2377/FUL) to the 1<sup>st</sup> Interested Party, Botley and North Hinksey Parish Council (“the Parish Council”) for the demolition of an existing single storey former scout hut and single storey Louie Memorial Pavilion and the erection of a new single storey community and sports pavilion to replace the existing along with associated works on land known as Louie Memorial Pavilion, Arnolds Way, Oxford, OX2 9JD (“the Site”).
3. The existing single storey former scout hut was previously used by the 2<sup>nd</sup> Interested Party, the 4<sup>th</sup> Scout Group (“the Scout Group”) for a period of almost 50 years until March 2021. The Claimant is the Chair of Trustees of the Scout Group. Both the Claimant and the Scout Group, amongst others, submitted detailed objections to the planning application.
4. By Claim Form dated 6 September 2023 the Claimant sought permission to challenge the Defendant’s decision to grant planning permission on 7 grounds set out in more detail in the accompanying Statement of Facts and Grounds. In summary:
  - a. Ground 1 is a contention that the District Council’s conclusion that the Scout Group could conduct its operations on two evenings a week was irrational, as was a conclusion that the Scout Group would not be prejudiced by the intended operation of the proposed new building. It is said that these conclusions were obviously wrong on the undisputed information before the Council.
  - b. Ground 2 is an allegation that the District Council’s Planning Committee was misled at its committee meeting by the failure of officers to provide the Planning Committee, when invited to do so, up-to-date information as to the Scout Group’s current and future operations which was drastically different to the figures provided to the Planning Committee and on which they relied.
  - c. Ground 3 is an allegation that the Planning Committee failed to have due regard to the public sector equality duty (“PSED”) in section 149 of the Equality Act 2010 because the Committee was not presented with the main significant adverse consequences to young people of the intended operation of the proposed new building, or the up-to-date operational information and instead adopted the Officer Report’s conclusion that the Scout Group and its young people would suffer no prejudice;
  - d. Grounds 4, 5 and 6 are to the effect that the Officer’s Report and the Committee misinterpreted and misapplied local planning policies and paragraph 99 of the National Planning Policy Framework (“the NPPF) by failing to identify the “provision”, “role” and “function” of the Scout Hut with its Scout Group, and

to compare this with future provision, which is said to be the approach supported by the considered formal guidance of Sport England concerning the application of paragraph 99 of the NPPF to playing fields and ancillary facilities.

- e. Ground 7 is a contention that the Council failed to impose a condition or to require a planning obligation that provided the minimum level of provision purportedly offered by the applicant for planning permission.
5. The Defendant opposed the grant of permission by its Acknowledgement of Service dated 26 September 2023 for reasons set out in its accompanying Summary Grounds of Resistance.
  6. As a preliminary point, the Defendant placed reliance upon the fact that the 1<sup>st</sup> Interested Party was, and remains, the freeholder of the Site and the 2<sup>nd</sup> Interested Party had no legal entitlement to use it at the time of the District Council's decision. The 2<sup>nd</sup> Interested Party had ceased to be a leaseholder in respect of any part of the Site since March 2021. The Defendant submitted it was under no obligation to require that previous levels of use of the Site by the 2<sup>nd</sup> Interested Party were maintained. It contended that the 2<sup>nd</sup> Interested Party was effectively seeking to manufacture such an obligation where none existed. The Defendant also dealt with each of the grounds in turn and submitted they were unarguable for the reasons set out in its Summary Grounds of Resistance.
  7. Permission to proceed with the claim was refused on consideration of the papers by Timothy Corner KC, sitting as a Deputy High Court Judge by Order dated 18 October 2023.
  8. The Deputy Judge gave his reasons for doing so as follows:
    - “1. Permission is refused for the reasons given by the Defendant in its Summary Grounds of Resistance. I add the following observations.
    2. An important element of context for this case is that the First Interested Party (the applicant for planning permission) owns the Site and the Second Interested Party (“the Scout Group”), whose interests the Claimant seeks to protect, has no legal interest in the Site and vacated the Site in March 2021. The Defendant cannot force the First Interested party to allow the Second Interested Party to use the Site or to grant it any right to use the Site. Further, the Scout Group's activities appear to have grown considerably since it left the Site.
    3. In that context ground 1, irrationality, is unarguable. The Claimant's submissions are based on the proposition that the conclusion in the Officer Report (OR) that the Scout Group would not be prejudiced was irrational because the proposed development could not or would not accommodate the current activities of the Scout Group. There was no requirement in policy for it to do so. The Scout Group had left the Site, and, operating elsewhere, had grown since. The statement in the OR (5.27) that the Scout Group would not be prejudiced was based on the statement that the equivalent level of meeting space and at suitable times could be provided. That statement was made (see OR 5.22-5.23) on the basis of evidence about the use the Scout Group made of the Site before it left the Site, which in my judgment is a reasonable approach, and it has not been shown that the statement was irrational on the basis of such an

- approach. Also, the OR was entitled to say (5.27) that the improved facilities for the wider community had to be taken into account in the planning balance.
4. Ground 2 fails for the reasons given in the Summary Grounds of Resistance. The officer was asked about the 2018 figures, gave a correct answer, and the Committee had before it the representations from the Scout Group which detailed the Scout Group's current activities.
  5. Ground 3 also fails for the reasons given in the Summary Grounds of Resistance. The OR dealt adequately with the PSED in the context of the statutory requirement to have due regard to the need to pursue the relevant policy goals.
  6. Grounds 4, 5 and 6 are unarguable. The material considerations raised by policy at national, local, and neighbourhood plan level were dealt with adequately.
  7. As to ground 7, it was not irrational for the Defendant to fail to secure via planning condition or planning obligation a minimum level of provision for scouting activities, having regard to the fact that the Scout Group had no legal interest in the Site and had not used any part of the Site since 2021.”
9. The Claimant renewed his application for permission by Form 86B dated 25 October 2023. This set out in further detail why the Claimant maintained the grounds of challenge and considered the refusal of permission to be wrong.
  10. At the renewal hearing, the Claimant appeared in person. The Claimant is a practising barrister, but he has made it clear that he appears in person for this claim. He reiterated his reliance on his grounds as articulated in the Statement of Facts and Grounds, and amplified in his grounds of renewal and his skeleton argument for the hearing. With admirable succinctness, he dealt with the main elements of claim in his oral submissions.
  11. The Defendant was represented by Ms Emmaline Lambert of Counsel. She explained that the Defendant continued to rely upon the Summary Grounds of Resistance, along with a supplemental skeleton argument provided for the hearing. She similarly dealt succinctly at the oral hearing in responding to the renewal application. I am very grateful to them both for the concision and clarity of their submissions.
  12. The First and Second Interested Parties were not separately represented and did not appear, although the Claimant is self-evidently seeking to protect the interests of the Second Interested Party and the children for which it provides. The Claimant has clearly devoted considerable time and energy in seeking to do so. It is clear to me that the Claimant has done so assiduously and left no stone unturned in his efforts.

### **Factual Background**

13. The Site is approximately 0.206ha in size and belongs to the 1<sup>st</sup> Interested Party, the Parish Council and has done since 1939. The Site forms part of the south area of the Louie Memorial Playing Fields maintained for public benefit.
14. The Site contains both the former Scout Hut and a single storey sports pavilion building known as the Louie Memorial Pavilion.
15. In 1973 the 1<sup>st</sup> Interested Party leased part of the Site to the Scout Group on what the

Defendant has described as a peppercorn rent basis. On 17 January 2001 a second lease for that part of the Site was entered into on similar terms, expiring on 1 July 2020.

16. The former Scout Hut was therefore used for nearly 50 years by the 2<sup>nd</sup> Interested Party for its scouting activities. The Claimant has described how the Scout Group made extensive use of it in the past and the Scout Hut was previously extended to add two further rooms in response to the Scout Group's needs.
17. The Defendant identifies, however, that since 2013 the 1<sup>st</sup> Interested Party started to consider the replacement of the existing buildings on the Site with a single joint-use community building and momentum for this increased in 2017. There was public consultation about the proposals, but the idea of such development was opposed by the Scout Group.
18. In the meantime, in 2019 the 1<sup>st</sup> Interested Party had applied for planning permission for redevelopment of the Site involving the demolition of the Scout Hut building and other sports building and erection of a single new community building (P19/V0696/FUL). This application was granted planning permission on 31 July 2019.
19. Unfortunately for the Scout Group, at some stage the 1<sup>st</sup> Interested Party informed it that the Scout Group would be required to leave the premises.
20. The circumstances in which the Scout Group say it was dislodged from the Scout Hut were set out within the Scout Group's submissions on the planning application under challenge, under the heading "NHPC dislodging the Scout Group from the Scout Hut" and under the heading "The Scout Group is "not currently involved in the project"" and it is addressed further in the Claimant's witness statement. It is clear that the Scout Group did not want to leave the premises.
21. The precise circumstances of that notification and departure appear to be contentious, but the broad effect seems to be that the Parish Council communicated that it would not offer the Scout Group a new long-term lease and only offered a short-term lease pending the commencement of its proposed buildings works for the Site. The Defendant states that the Parish Council served a notice on the Scout Group in 2019 under section 25 of the Landlord and Tenant Act 1954 terminating the existing tenancy on 1 July 2020 and the previous lease ended on that date. It is said the Scout Group continued to occupy the Scout Hut after that date under a tenancy-at-will having not entered into the proposed new short-term lease. In any event, it is common ground that the Scout Group vacated the premises in March 2021.
22. The Defendant relies on the fact that in 2020 the Claimant applied for permission to claim judicial review of the Parish Council's termination of the previous lease, but that permission to proceed with that claim was refused as unarguable by Order dated 14 January 2021. The Defendant identifies that this on the basis (amongst other things) that the claim did not raise any public law issues, but if it did, the claim was out of time as a challenge to actions in 2019. The Claimant submits this claim is not relevant to this challenge.
23. Since its departure from the Site, the Scout Group has continued to operate from other premises at the Oxford Rugby Club.

24. The Claimant has explained that the Scout Group is currently the largest of 17 groups in the wider Oxford area and almost the largest of 100 groups in the whole of Oxfordshire, with 165 young people meeting on five nights a week and carrying out its activities and operations at many other times too. The Claimant has identified that a large proportion of young people in the local community are members of the group, and states that it is several times larger than any other local youth organisation and has referred to the submissions made about it by Anthony Morris for the Oxford Spires Scout District in response to the application.
25. For the purposes of the renewal, the Claimant notes that the most significant expansion of the Scout Group took place in March 2020 when the group moved to double sections requiring it to operate on five nights, not four, and the Parish Council was alerted to this likely expansion in October 2018. It says that expansion has been supported by the rugby club on a temporary basis, but it is not because of the move that the expansion occurred. It says the Defendant would be wrong to argue that operations of the Scout Group expanded only after it had been evicted from the Scout Hut and because of that move. I have carefully considered the information that was provided by the Claimant and the Scout Group to the District Council and satisfied myself that members had all that information available to them when making their decision as set out in more detail below.
26. The Scout Group is a registered charity. All its activities are run by local volunteers, and its trustees have a duty to ensure its continued operation for the benefit of young people.
27. The Defendant states that following the Scout Group's departure from the Site, in May 2021 the Scout Hut was inspected for energy efficiency. It states it was given an Energy Performance Certificate rating of G. The Defendant submitted that whilst this rating stands, the Parish Council is not able to let out the building. In response in his skeleton argument the Claimant argues that this is wrong on the basis that the relevant reports identify relatively trivial remedial work of replacing the light bulbs and heating, or improving the ceiling insulation and sealing the gaps to the outside, or installing a heat pump, none of which would be difficult for the Scout Group or the Parish Council to undertake. In my judgment this response is misplaced in an important respect. It is clear from what the Claimant himself is accepting that the Scout Hut cannot be let out without remedial works. As identified below, the question of the cost of such refurbishment was a matter that was taken into account by the Parish Council and the District Council as part of its consideration of the development proposals, along with other options. There is no ground of challenge to the findings of fact made by the District Council in this respect.
28. In July 2022 the 2019 planning permission expired without implementation within three years of its grant. On 30 September 2022 the Parish Council made its further application to the District Council for the planning permission which is now under challenge. Although there are changes to what is proposed as compared with the form of development approved in 2019, the basic principles of what was proposed remained the same, including in particular the demolition of the Scout Hut and sports pavilion buildings and replacement with a new single community building.
29. As identified in paragraph 5.3 of the Officer's Report that led to the grant of planning permission, the principle for redevelopment of the Site as a community facility had

been established under the planning permission granted in 2019. The Officer's Report advised members that the principle of the previously approved development was comparable to what was being proposed in the 2022 planning application, and the policy relating to the spatial strategy was unchanged. Officers ultimately considered that the principle of development on the Site for community purposes continued to be acceptable.

30. As already noted, the Claimant and the Scout Group submitted objections to the Parish Council's 2022 planning application. The Claimant's basic objection to the 2022 planning application was that it considered the new building proposed was not an appropriate replacement to accommodate the Scout Group's current or anticipated future activities. They considered it would, at its highest, provide the Scout Group with drastically reduced access to inadequate facilities and they did not consider they could carry out on the Scout Group's activities from the Site. The Claimant stated that the Scout Group would have to try and build itself a new scout hut elsewhere, or if it failed to do so quickly, it would need drastically to reduce its operations and the number of young people who took part so that its function would become unrecognisable. The Claimant considered that the planning proposal of the Parish Council risked the survival of the Scout Group in any form in the medium term.
31. The Scout Group is also concerned that there is no other building in the local area that can enable the continuation of the Scout Group's activities. Whilst noting that it currently holds its meetings at the local rugby club, the Claimant and the Scout Group consider this facility to be inadequate for the Scout Group's activities in many respects (and necessarily short term).
32. This was explained in more detail in its submissions to the District Council in its objections to the Parish Council's application under the heading "Operation from Oxford Rugby Club". The Claimant also submits that there is no other organisation in the area that can replicate or replace what the Scout Group currently offers to young people.
33. Of particular significance to the Claimant's claim, is the fact that as part of its objections to the Parish Council's proposals, the Scout Group included two schedules setting out its timetabling requirements, and other requirements over the Scout Hut. The Claimant relied on these schedules as demonstrating the inability of the Scout Group to continue its operations in the proposed new building over just two evenings a week as it understood the Parish Council had proposed in terms of use of the new buildings.
34. The Claimant submits that the information contained in those schedules was of fundamental importance to the advice provided to the District Council's Planning Committee in the Officer's Report and to the Committee's decision. He submitted that the information in those schedules should have been presented to the District Council's Planning Committee by officers in a form that was both clear and quick to read, but neither the schedules nor the information they contained, nor the significance of the information, was referred to by officers in the Officer's Report or at the Committee meeting.
35. I was invited to read the schedules in full and I can confirm that I have done so, along with all of the objections that were submitted by the Claimant or on behalf of the Scout Group to the Parish Council's planning application. I was also taken specifically to



the schedules and the submissions about their significance at the hearing of the Claimant's renewed application.

36. The first schedule was provided early in the District Council's consultation process on the planning application. The second schedule was provided to the District Council on 25 July 2023, the day before the Planning Committee meeting on 25 July 2023, along with re-provision of the first schedule and further submissions on the significance of both. These submissions, amongst other things, sought to point out to the Planning Committee perceived errors and omissions in the Officer's Report.
37. It was prior to the Planning Committee meeting to determine the application, this Officer's Report was produced. It recommended the grant of planning permission.
38. Section 1 of the Officer's Report provided an introduction and a summary of the proposal, with a comparison between it and the development approved under the 2019 planning permission.
39. Section 2 of the Officer's Report provided a summary of the consultation responses and representations received on the planning application, but noting that the full comments could be viewed on the District Council's website.
40. That section included a summary of objections relating to "Community and access to facilities" as follows:

“- Loss of existing Scout hut – refurbishment should be considered

- Scheme does not fulfil the intended purpose of replacing existing facilities, and does not provide suitable facilities for Scout Group
- The Scout Group require their own space separate to the pavilion.
- Failed in their statutory obligation to address the current and future needs of community users of this space including the Scout Group
- Duplication of existing facilities already in local area
- Lack of demand
- Unviable and expensive project
- Lack of funding.”

41. It also included a summary of community group objections, with that relating to the Scout Group summarising its objection as follows:

“- The replacement building does not meet the operational needs of the scout group, thereby removing the opportunity for young people to meet.

- Renovation and refurbishment have been ruled out, when this would continue to meet the group's needs.
- A leisure facility is a different use to a community use – the Scout Hut demolition fails to meet the requirements of planning policies to replicate its

function here, and the proposed new building has a very different function.

- The scheme engages the Equality Duty and no assessment of impact has been carried out. There is indirect discrimination against young people as a result of the proposal, which is a fundamental consideration.
- The current scheme does not respond community wishes and the Scouts have not been provided with the opportunity to properly engage with the process.”

42. Section 3 of the Officer’s Report referred to relevant planning history. Section 4 of the Officer’s Report dealt with the absence of a need for a formal environmental impact assessment and then section 5 of the Officer’s Report turned to deal with what the officers considered to be the main issues.

43. Paragraphs 5.2-5.4 dealt with the principle of development. Paragraphs 5.5 -5.11 considered Green Belt issues, as the Site lies within the Green Belt. That included consideration of the policy contained in what was then paragraph 149 of the NPPF (now paragraph 154 of the latest version). The Officer’s Report refers to what is identified in that paragraph as what may constitute very special circumstances for development in the Green Belt. In fact it is more accurately identifying exceptions to the principle that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. For the reasons identified in the Officer’s Report, the officers considered that what was proposed fell within those exceptions.

44. The Officer’s Report then turned to the question of “Equality and Diversity” and stated as follows:

**“5.12 Equality and Diversity**

In determining this planning application, the Council must have regard to its equalities obligations, including its obligations under Section 149 (Public Sector Equality Duty) of the Equality Act 2010. The public sector equality duty is a duty on public authorities to consider or think about how their policies or decisions affect people who are protected under the Equality Act, i.e. those with protected characteristics. This is particularly relevant in this application as the Scout Hut has been used by the Scouting Association since 1973. The Scouts have a protected characteristic of ‘age’, and historically this could also be considered to be ‘sex’, as in the past the majority of Scouts were young boys. For these reasons, the Public Sector Equality Duty (PSED) is therefore engaged, and must be fully considered in how officers advise the committee, and in how committee members determine the application.

5.13 When the council as local planning authority carries out its functions, the Equality Act says it must have due regard or think about the need to:

- eliminate unlawful discrimination
- advance equality of opportunity between people who share a protected characteristic and those who don’t
- foster or encourage good relations between people who share a protected

characteristic and those who don't

5.14 The PSED means public authorities must think about whether they should take action to meet these needs or reduce the inequalities. In doing this, public authorities are allowed to treat some groups more favourably than others.

Section 149(1) of the Equality Act says public authorities should think about the need to:

- remove or reduce disadvantages suffered by people because of a protected characteristic
- meet the needs of people with protected characteristics
- encourage people with protected characteristics to participate in public life and other activities

5.15 It should however be noted that the Council's equality duty is not to carry out the objectives in section 149(1) above all other considerations, but to have 'due regard' to the need to achieve them. Even in cases where the duty is to pay very high regard to the objectives, a public authority is entitled to balance those considerations against countervailing factors. The weight to be given to those countervailing factors is for it to decide.

5.16 In this particular case the Scout Group (4th Oxford) has raised objections on the basis of equality of opportunity for their members, as the proposal would require demolition of the existing Scout Hut. Although the former Scout hut was leased from North Hinksey Parish Council, it provided the Scout Group with a standalone facility for which they had sole use and could utilise as and when they wished at any time of day, night or weekend, without them having then to fit in and around other users of a shared building. They also raised concerns that the replacement building would not be able to fully provide for their specific needs, for example, separable space alongside other community groups for safeguarding reasons; leased at an affordable cost; having sufficient use of the main hall at a time that is appropriate for its younger members; and provision of appropriate storage and drying areas for large equipment.

5.17 In considering these concerns, officers have had regard to representations made by the Scout Group to the current application, and considered the timeline and supporting documents posted on the North Hinksey Parish Council's website which sets out the parish council's view of the history of the scheme, and discussed the 2019 application (P19/V0696/FUL) and representations with planning colleagues.

5.18 Officers understand that between 2013 and 2018 the 4th Oxford Scout Group was a stakeholder in finding a solution for the two community use buildings, which were deteriorating over time. At that point the project brief (October 2017) prepared by the key stakeholders, with input from the Scout Group, seemed to be moving towards a joint use community building. Further to public consultation (2018), changes were made to the design to accommodate representation from the Scout Group.

5.19 Towards the end of 2018 the Scouts again raised concerns about terms of access under a new lease/licence agreement, confirmation of costs, and being able

to use the hall for the hours they needed that was appropriate for their younger members.

5.20 The Scouts' preference moved to retention of the existing scout hut to allow for these needs to be met. In the parish council's response, they clarified that there were elements of the request that could be met, for example, through negotiating a suitable lease agreement which set out reasonable room hire fees. However, certain elements of the objections were challenged, for example providing a comparable level of hall availability to their existing use, rather than increased hours or priority use; equivalent meeting times and days for existing Scout Groups and their corresponding ages; and challenging the available maintenance funds alongside expected subscription fees. Notwithstanding, significant steps had been taken in terms of revisions to the design and liaising with the Scout Group to address concerns over safeguarding, cost, priority access, specialist outdoor and storage needs, and to create an equivalent meeting space that met their specific needs.

5.21 It is acknowledged that 'age' as a protected characteristic is a key factor in determining whether the replacement facilities continue to offer the same opportunities to younger members, i.e.. early evening meetings would need to be made available for the younger groups.

5.22 Although the 4th Oxford Scout Group is currently meeting at a different venue, in 2018 it is understood that the sections met on the following days – the ages of each group are included for clarity: Monday for Cubs (8-10.5 yrs), Tuesday for Explorers (14-18 yrs), Thursday for Scouts (10.5-14 yrs), Friday for Beavers (6-8 yrs).

5.23 The replacement building would provide them with the opportunity to meet for the same number of hours but would require two sections to meet on the same evening, rather than 4 separate slots across the week. While it would not be reasonable to schedule younger groups 'back-to-back' on the same evening, it is reasonable for the Scouts or Explorers (older age group) to meet following the Cubs or Beavers (younger age group) on the same evening. This is one of the recommendations from the parish council, and is scheduled in this way by other Scout groups. Officers consider this is an appropriate way of meeting the PSED as the equivalent groups could continue to meet in the replacement facilities, and the younger sections would not have to be scheduled at a time that prejudiced the protected characteristic of age.

5.24 In terms of 'sex' being a protected characteristic, it is understood that a single mixed-sex group of a similar age meets for each section. While Scouts have historically been young males, and some Scout Troops meet as single sex groups, this is not the case here and not relevant to this application.

5.25 It is understood that the 4th Oxford Scout Group's preference is to continue to use the Scout hut building. In terms of other factors that must be weighed alongside the equality objectives, it should be noted that the Scout hut is in a poor condition and has an Energy Performance Certificate rating of G, which means it cannot currently be used. The Scouts have been using meeting space at the rugby club since February 2021. As part of the options appraisal (as per the consultation presentation

prepared by Nortoft, April 2018) costings were carried out for a part new / part refurbish option, as well as new build options. The new build options were more costly at that stage, but the cost of refurbishment is likely to have increased since 2018 given the continued deterioration of the building.

5.26 While cost is only one element of it, officers must also afford weight to community use policies in determining the application, as set out below. In considering a proposal for a replacement building, the applicant has demonstrated that an equivalent level of use and facilities can be provided to existing users. However, the improved facilities would also ‘encourage people with protected characteristics to participate in public life and other activities’ who are currently unable to make use of the two community buildings, or access the Scout Group if they were to continue to meet in the existing buildings – there is a step into the building and no disabled wc. Refurbishment of the Scout Hut alone is unlikely to deliver more accessible changing facilities, but a multi-use facility that can accommodate the needs of the Scouts Group and other local community groups would collaboratively benefit the wider community.

5.27 These matters have informed the officer’s recommendation when considering countervailing factors and in having regard to the Equality Act. In conclusion, the Local Planning Authority has had regard to the PSED through the officer’s assessment and in the way these matters have been presented to Planning Committee. When considering the Scout Group objections to the proposal, these have been considered in light of the PSED. Officers have concluded that the Scout Group would not be prejudiced by the removal of the scout hut, which has historically been their meeting place, as the equivalent level of meeting space, and at suitable times, can be provided. The improved facilities for the wider community (as a multi-use building, over retention and refurbishment of the Scout hut) also weigh into this decision, which is in line with planning policies, specifically paragraph 99 of the NPPF, CP8 of the LPP2.”

45. The Officer’s Report then turned to the question of “Community Use” and stated as follows in paragraphs 5.28-5.36:

“5.28 Community use

Paragraph 99 of the NPPF sets out that:

‘Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
- b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
- c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

5.29 This is drawn through to policy CP08 of the LPP2 which supports the provision of new or extended community facilities, including community and

village halls, particularly where they are located within or adjacent to the built-up area of an existing settlement, where they meet an identified need and where they are acceptable to all members of the community and promote social inclusion.

5.30 Development that results in the loss of community facilities is required to demonstrate that it would lead to significant improvement of an existing facility or that the replacement would be equally convenient for the local community, with equivalent or improved facilities.

5.31 The proposal would result in the loss of two buildings which in recent years have been used as a scout hut, youth club room, sports changing facilities and for other community groups and events. The Design and Access Statement shows that both buildings are in a poor state of repair, internally and externally, and asbestos is present in the buildings.

5.32 The proposed new building has an increased floor area but the increase is primarily due to meeting the changing room requirements set out in Sports England guidance. The replacement building would result in the equivalent number of meeting rooms, with a similar amount of floorspace, but with a more flexible and accessible arrangement of community space and in a much improved condition. For example, both rooms and associated changing / wc facilities would be accessible within the main building, and both rooms would have visibility and access out onto the sports pitches, all access would be step- free. The building includes a range of changing facilities accessible to all, as well as separate toilet facilities close to the main hall. An increased amount of storage is proposed, including internal storage, covered outdoor / drying space, and lockable container space.

5.33 This is a significant improvement on the current facilities, and introduces flexibility into the buildings to allow opportunities for use by a range of community and sports groups in the local area. While minor changes have been made to the layout to respond to comments from Sport England, and the building has been slightly reorientated within the site, the proposed scale of facilities and space are broadly the same as the previously approved scheme in 2019.

5.34 The application has been accompanied by an indicative schedule, demonstrating how community groups currently use the two buildings, and how groups could be accommodated in the replacement facilities. It is understood that throughout the development process, interest has been expressed from other community groups in using the new pavilion. The indicative schedule indicates that the facilities could accommodate groups throughout the day and into the evening; that sports and community groups could be accommodated alongside each other without conflicting with each other, including having their own storage. The access drive has sufficient turning space for a minibus to manoeuvre and park, to open up opportunities for groups with mobility difficulties or being driven from shared residential accommodation. There is scope to accommodate groups of differing ages and with specific care needs, and also to cater for small-scale private parties and community events.

5.35 In terms of addressing the requirements of para 99 of the NPPF and CP8 of

the LPP2, the benefits of the replacement facilities would outweigh the loss of the current community buildings. The more flexible meeting space, improved storage facilities and step-free access would provide better facilities in terms of quality and accessibility. The proposed changing and wc facilities also contribute positively to improved access and social inclusion, making the space and sports facilities available to a wider range of community groups. The replacement facilities are on the same site on the edge of a built-up residential area, and would remain within easy reach of community groups currently using the facilities. Sport England, as a statutory consultee, have not objected to the proposal, and note that it is in line with Policy Exception E2 of their Sport England Playing Fields Policy.

5.36 For these reasons, the replacement facilities would widen the range of activities and events available to the local community and the proposal complies with national and local policies relating to community uses.”

46. Having then turned to consider other matters (not of material relevance to the present claim), the Officer’s Report set out conclusions as follows:

“6.0 CONCLUSION

6.1 The proposal falls within the very special circumstances for development in the Green Belt, and by virtue of the siting, scale and design would not harm the openness of the green belt. Officers have had regard to the Public Sector Equality Duty in considering how existing community groups, and those particularly with protected characteristics, would be affected by the proposals, and concluded that equivalent, improved, community facilities can be provided without disadvantaging or limiting opportunities available to specific community groups.

6.2 The building retains a suitable relationship with the existing sports and playing fields, and the design maximises use between the two. The step-free access, and ‘access to all’ changing and wc facilities contribute positively to improved access and social inclusion, making the space and sports facilities available to a wider range of community groups.

6.3 Subject to conditions securing drainage measures and long-term maintenance, the development would not pose a risk to the hydrology or high ecological value of the lowland fen and associated habitats. Sufficient detail has been provided to demonstrate the development complies with highway, access, parking and residential amenity policies. Subject to conditions, suitable crime prevention measures, tree protection, biodiversity enhancements and a detailed landscaping scheme have been secured as part of the proposals.

6.4 The development is in accordance with the National Planning Policy Framework, and the local development plan, including the North Hinksey Neighbourhood Plan. Subject to the conditions listed at the beginning of the report, officers recommend approval of the application.”

47. A visit to the Site was carried out on 24 July 2023 attended by 5 of the Planning

Committee members. It was the subject of a detailed Officer's Report. The Defendant has also identified that the representations from the Claimant were emailed to the Planning Committee members on 25<sup>th</sup> July 2023. The Planning Committee meeting took place on 26 July 2023. Members asked questions of the Officer about the report and use of the Site previously made by the Scout Group.

48. In the event, the Planning Committee resolved to grant planning permission and a decision notice was issued that day.

### **Legal and Policy Framework**

49. There is no material dispute between the parties as to the relevant legal framework for consideration of the Claimant's challenge.

50. In accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004 taken in conjunction with section 70(2) of the Town and Country Planning Act 1990 the application fell to be determined in accordance with the development unless material considerations indicated otherwise.

51. The meaning of planning policies is a matter of law but the question of how planning policies should be applied in each case is a matter of planning judgment with which a court will only interfere on the basis of rationality: see eg *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13; [2012] PTSR 983 at [18]-[19]; and *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] UKSC 37; [2017] 1 WLR 1865 at §23 and §73.

52. There is a wide range of potentially relevant planning issues that that a decision-maker may lawfully take into account as material planning considerations. Absent irrationality or illegality, the weight to be given to such issues is a matter for the decision maker. However a decision-maker will not generally commit an error of law if it fails to take into account a potentially material consideration unless obliged to do so by legislation or policy or because that consideration is so obviously material that not to take it into account would be irrational: see R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council [2020] UKSC 3; [2020] PTSR 221 at [30]-[32] applying *Tesco Stores Ltd v Secretary of State for the Environment and West Oxfordshire District Council* [1995] 1 WLR 759 at 780 and *Derbyshire Dales District Council v Secretary of State for Communities and Local Government* [2009] EWHC 1729 (Admin); [2010] 1 P&CR 19 at §§17-18.

53. In *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314; [2019] PTSR 1452, Lindblom LJ set out at §42 the principles that a court will apply when criticism is made of an officer's report in a legal challenge of this kind as follows:

“(1) The essential principles are as stated by the Court of Appeal in *R. v Selby District Council, ex parte Oxton Farms* [1997] EGCS 60 (see, in particular, the judgment of Judge L.J., as he then was). They have since been confirmed several times by this court, notably by Sullivan L.J. in *R. (on the application of Siraj) v Kirklees Metropolitan Borough Council* [2010] EWCA Civ 1286, at paragraph 19, and applied in many cases at first instance (see, for example, the judgment of Hickinbottom J., as he then was, in *R. (on the application of Zurich Assurance Ltd., t/a Threadneedle*



*Property Investments) v North Lincolnshire Council* [2012] EWHC 3708 (Admin), at paragraph 15).

(2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in *R. (on the application of Morge) v Hampshire County Council* [2011] UKSC 2, at paragraph 36, and the judgment of Sullivan J., as he then was, in *R. v Mendip District Council, ex parte Fabre* (2000) 80 P. & C.R. 500, at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave (see the judgment of Lewison L.J. in *Palmer v Herefordshire Council* [2016] EWCA Civ 1061, at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee's decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.

(3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R. (on the application of Loader) v Rother District Council* [2016] EWCA Civ 795), or has plainly misdirected the members as to the meaning of a relevant policy (see, for example, *Watermead Parish Council v Aylesbury Vale District Council* [2017] EWCA Civ 152). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example, *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427). But unless there is some distinct and material defect in the officer's advice, the court will not interfere.

54. Section 149(1) of the Equality Act 2010 sets out the public sector equality duty as follows:

“(1) A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

55. The Claimant relies upon three principles derived from the judgment of McCombe LJ in *R (Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345; [2014] Eq LR 60: the concept of “due regard” requires the court to ensure that there has been a proper and conscientious focus on the statutory criteria, so there has been “rigorous consideration of the duty” in section 149 of the Equality Act 2010; an authority must be “properly informed” before taking a decision and if the relevant material is not available there will be a duty to acquire it; and the relevant duty is upon the decision-maker personally, and so what matters is what the decision-maker took into account and what they knew and a decision-maker cannot be taken to know what his or her officials know, or what may have been in the mind of officials in proffering their advice.
56. The Claimant also relies on a principle that it was necessary for the Committee to “be clear precisely what the equality implications are when [it] puts them in the balance ” - see *R (Hurley and Moore) v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin) at [78].
57. The public sector equality duty is not a duty to achieve a particular result: *R (Baker) v Secretary of State for Communities and Local Government* [2008] EWCA Civ 141; [2009] PTSR 809 at [31]. It is a duty to have regard to the need to pursue the policy goals affirmed in the 2010 Act. If an authority subject to the public sector equality duty properly considers the relevant matters, it is for the authority, and not the court, to decide how much weight to accord to each factor relevant to the decision: *R (Hurley & Moore) v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin); [2012] HRLR 13.
58. The Defendant refers to what Elias LJ stated in that case at [77]-[78]:
- “... I do not accept that this means that it is for the court to determine whether appropriate weight has been given to the duty. Provided the court is satisfied that there has been a rigorous consideration of the duty, so that there is a proper appreciation of the potential impact of the decision on equality objectives and the desirability of promoting them, then as Dyson LJ in *Baker* (para 34) made clear, it is for the decision maker to decide how much weight should be given to the various factors informing the decision.
- The concept of "due regard" requires the court to ensure that there has been a proper and conscientious focus on the statutory criteria, but if that is done, the court cannot interfere with the decision simply because it would have given greater weight to the equality implications of the decision than did the decision maker. In short, the decision maker must be clear precisely what the equality implications are when he puts them in the balance, and he must recognise the desirability of achieving them, but ultimately it is for him to decide what weight they should be given in the light of all relevant factors. ...”
59. The Defendant also refers further to what Elias LJ stated at [89]-[90] in *Hurley and Moore*:

“89. It is also alleged that the PSED in this case involves a duty of inquiry. The

submission is that the combination of the principles in *Secretary of State for Employment v Tameside Metropolitan Borough Council* [1977] A.C.1044 and the duty of due regard under the statute requires public authorities to be properly informed before taking a decision. If the relevant material is not available, there will be a duty to acquire it and this will frequently mean that some further consultation with appropriate groups is required. Ms Mountfield referred to the following passage from the judgment of Aikens LJ in *Brown* (para 85):

“ .. the public authority concerned will, in our view, have to have due regard to the need to take steps to gather relevant information in order that it can properly take steps to take into account disabled persons' disabilities in the context of the particular function under consideration.”

90. I respectfully agree. But none of this is necessary if the public body properly considers that it can exercise its duty with the material it has. [...]

60. As to the policy framework the Claimant refers (amongst other things) to paragraph 99 of the NPPF which was referenced in the Officer's Report above. The Claimant places particular reliance upon the wording which requires replacement of any loss by “equivalent or better provision” in terms of quantity and quality in a suitable location.

61. The Claimant also places particular reliance on the District Council's “Local Plan 2031 Part 2”, adopted in October 2019 and “Development Policy 8: Community Services and Facilities” which contains the following (with the wording emphasised by the Claimant shown in bold):

*“b. Development proposals that would result in the loss of existing community facilities and services, including village and community halls, will only be supported where it can be demonstrated that:*

...

*iv. it would lead to the significant improvement of an existing facility, or **the replacement of an existing facility equally convenient to the local community it serves and with equivalent or improved facilities***

*v. the facility is no longer economically viable for the established use, or there is a suitable and sustainable alternative that is located nearby, and*

*vi. the facility is no longer required.”*

62. The Claimant also refers to the North Hinksey Parish Neighbourhood Plan adopted in May 2021 and the relevant parts of SI1 as follows (again with the Claimant's emphasis):

*“Developments involving a **change of use or loss of function(s)** at these locations **will be refused** unless at least one of the following applies:*

*The proposed development is ancillary and complementary to the main use of the facility, and would not result in a negative visual impact on the site and surrounding area; and/or*

*Replacement land and facilities / infrastructure suitable for carrying out the identified role of the site, or at least equal benefit to the local community in terms of scale, quality and accessibility would be provided elsewhere within North Hinksey Parish” (emphasis added)*

63. The Claimant further submitted that the Parish Council’s planning proposal also engaged:
- a. NPPF Paragraph 92, and its aim to provide “*healthy, inclusive and safe spaces*” for “*social interaction*”, “*healthy lifestyles*” and to meet “*well-being needs*”.
  - b. NPPF paragraph 93, and its aim to provide “*the social, recreational and cultural facilities and services the community needs*” and its requirement to “*guard against the unnecessary loss of valued facilities and services*”, “*particularly where this would reduce the community’s ability to meet its day-to-day needs*”.
64. The Claimant’s essential submission is that the requirements in Policy CP08 of the Local Plan and SI1 of the Neighbourhood Plan for the replacement of a facility with “*equivalent*” facilities (CP08), or facilities “*suitable for carrying out the identified role of the site*” of “*at least equal benefit ... in terms of ... accessibility*” was not met in this case because the new building proposed did not enable the access of existing users, but excluded some of them in terms of the Scout Group’s use of the Scout Hut. The Claimant submitted there was no equivalence between access and no feasible access and the role of a site was not maintained where its previous user would be excluded and this was particularly stark when the user in question was by far the largest user, as the Scout Group was here.
65. As to paragraph 99 of the NPPF and any reliance upon the criterion permitting alternative or different provision in terms of “the benefits of which clearly outweigh the loss of the current or former use”, the Claimant submitted that none of the development plan provisions make provision for this and if the District Council were to rely on this criterion, it needed to disapply Policies CP08 and SI1 of the development plan and the Planning Committee was not advised of this and the departure from the development plan. To the contrary, the Claimant submits that the District Council erroneously concluded that the development was in accordance with the NPPF and the development plan. The Claimant submitted that specific provision was made in Policy CP08(b)(v) and (vi) to cover the situation where a facility was not currently in use, namely “*the facility is no longer economically viable for the established use, or there is a suitable and sustainable alternative that is located nearby*”, for the former, and CP08(b)(vi) reads “*the facility is no longer required*”. The Claimant submitted that the situation here, where the Scout Hut was still required by the local community, but the landowner had terminated the users’ private legal rights, meant that the proposal did not fall within the exceptions and the development plan instead required replacement provision.
66. The Claimant submits that these provisions provide a full answer to the observations of the Deputy Judge when refusing permission on the basis that he proceeded on an incomplete identification of the relevant facts and the inconsistency of the proposal on those facts with Policy CP08(b)(v) and (vi) and the support the policy gave to the Scout Group’s continued operation from the Site, despite it having been dislodged by the

Parish Council. The Claimant submitted that the relevant policies seek to protect the significant public interest in the use of such facilities needed by the community and the need to ensure future provision that is required is in fact provided, and the District Council could either reject planning applications that failed so to provide, or impose conditions as to the design and future operation (such as community use agreements). The Claimant submitted that the adverse effect on the Scout Group and its young people was contrary to the public interests promoted by such policies and this was not a matter of private dispute with the Parish Council. The Claimant drew on an analogy of Sport England's protection of existing sports facilities and playing fields in the public interest. The Claimant argued that the public interests promoted by planning policies would successfully be avoided if, the Scout Group having been dislodged by the Parish Council, planning policies were interpreted to ignore both the historic use of the site and the future needs of its previous users. It was submitted that that avoidance would be unlawful on the proper interpretation of planning principles.

### **The Grounds of Challenge**

67. The above submissions were incorporated and articulated by reference to the Claimant's identified grounds of challenge and I therefore deal with them in considering each of the grounds of challenge in turn below.
68. Having considered all of the submissions that the Claimant has made, along with all of the documents provided which set out those submissions and the representations to the District Council, and despite the forcefulness with which the Claimant's submissions were made, I find myself in agreement with most of the submissions made by the Defendant, and all of the observations of the Deputy Judge when refusing permission as amplified below.

#### Ground 1 – Scout Group's operations

69. Ground 1 of the Claimant's challenge is set out in full in paragraphs 25-30 of his Statement of Facts and Grounds. In summary, the Claimant submits that the conclusion of the Planning Committee that the Scout Group could operate from the proposed new building with access on only two nights a week to be irrational (as defying basing logic), as was any conclusion that the Scout Group would not be prejudiced in using the new building. The Claimant submits that the prejudice is clear, extensive and undisputable.
70. The Claimant submits that the logic applied in the Officer's Report is fundamentally flawed, namely (as the Claimant submits the report was stating) that it is feasible for the young people and volunteers of this very large Scout Group with its specific circumstances to operate over five nights a week and at other times in the way that an unknown scout group holds two section meetings on one night, in its own unknown particular circumstances, with an unknown number of young people and volunteers, with those meetings of unknown content, unknown duration, with unknown facilities, and at unknown times of day. The Claimant submits that the matters relied upon by the Committee could not logically lead to the conclusion that this Scout Group could continue its clearly identified operations in the New Building.
71. The Claimant further submits that the Defendant has not sought to explain how the operations of the Scout Group could actually be continued in the proposed new

building, or how the Officer's Report conclusions were rational and the Claimant submits that the Defendant seems to now accept the serious harm that will be caused.

72. The Claimant also argued that the provision of information by the Parish Council about operations in 2018 (which the Claimant submits was itself incorrect and misleading) is difficult to understand, since it did not reflect what the Parish Council well knew to be the actual operations of the Scout Group. He submits this approach seems to have distracted the planning officer from their proper purpose of assessing the actual current and future needs of the Scout Group, and the Officer's Report failed to engage with the materials identifying the actual operations of the Scout Group and how these could without doubt not be carried out in the proposed new building.
73. The Claimant argues that the criticisms he levels at the Officer's Report are not mere criticisms of the degree of weight to be given to any factor, but the Committee has in fact failed to engage at all with probably the most important factors bearing on its decision. He argues that whilst the Officer's Report was clearly considering the ability of the Scout Group to operate from the new building in the future, it failed to engage with the only material that would assist its analysis and the Planning Committee was significantly and seriously misled.
74. The Claimant submits that to the extent that the Defendant argues that the Officer's Report was addressing only the ability of the Scout Group to operate four sessions on two nights, and that this was not irrational, that is unsustainable because such an approach would (a) irrationally fail to consider the central issue of the actual future needs of the Scout Group; and (b) be inconsistent with what is clear from the Officer's Report that it is addressing the future needs of the Scout Group.
75. The Claimant places particular reliance on the schedules provided, including the Second Schedule which shows that it would not be possible to provide four sessions on just two nights. He points out that the needs of the Scout Group and the requirements on the proposed new building would be far greater than just the time for those four sessions, if that is all it was providing and the Scout Group has far greater demands on the building. He submits it was therefore necessary for the Planning Committee to consider the Scout Group's limited future operation from the proposed new building and the harm this would cause to young people, in applying the planning principles and PSED set out above. He submits the irrational approach to this issue caused an irrational application of these principles.
76. As an important matter of relevant and indisputable context for considering whether or not the District Council's determination was lawful, I agree with the Defendant and the Deputy Judge that it is relevant that at the time of the decision taken by the District Council, the Scout Group was no longer occupying the Scout Hut. It was not operating from the Site. Those operations had ceased in March 2021. I agree in principle that whilst the District Council was lawfully able to take into account the Scout Group's previous use of the Site, it was not under any legal obligation to secure the Scout Group's use of the proposed new building to the extent of its previous use, or to the extent of the Scout Group's future requirements.
77. In my judgment, Ground 1 and the challenge generally advanced by the Claimant is wrongly predicated on such an assumption. I consider that this mistaken approach by the Claimant has infected the Claimant's reading of the Officer's Report and the

Planning Committee's determination, along with the Claimant's application of the relevant development plan policies and the NPPF.

78. Read fairly and as a whole, the Officer's Report was not suggesting, nor purporting to suggest, that the Scout Group would be able to carry out all of the activities it had previously carried out in the proposed new building in the way the Scout Group wanted, or its future activities in the way it wanted. In that respect, there is no real issue with the Claimant's schedules. It is obvious from them and the representations that the Scout Group had made that it could not operate all of its activities with the same timetable it had previously used, or proposed to use, or run all of the same activities. But that is not what the Officer's Report was suggesting, nor consequently what the District Council concluded.
79. It is clear from a fair reading of the analysis provided by Officers, beginning in particular with their consideration of equality and diversity issues at paragraph 5.12 of the report, that they recognised the demolition of the Scout Hut and the provision of a single new community building would not allow the Scout Group to operate in that way.
80. Thus, for example, paragraph 5.16 of the Officer's Report specifically noted the Scout Group's objections "on the basis of equality of opportunity for their members" and the fact that the Scout Hut had provided them with "a standalone facility for which they had sole use and could utilise as and when they wished at any time of day, night or weekend, without them having to fit in and around other users of a shared building". The same paragraph went on to record their concerns that the replacement building would not allow them to fully provide for their specific needs "for example, separable space alongside other community groups for safeguarding reasons; leased at an affordable cost; having sufficient use of the main hall at a time that is appropriate for its younger members; and provision of appropriate storage and drying areas for large equipment". This paragraph is therefore clearly referring to the Scout Group's objections and identified losses to its activities that would arise from the absence of a dedicated Scout Hut. Both the officers and consequently members were clearly aware of this.
81. Paragraph 5.17 then explains that in considering those concerns, officers had had regard to the representations from the Scout Group and considered the timeline and supporting documents on the Parish Council's website which set out the Parish Council's view of the history of the scheme and the context of the 2019 planning application.
82. Paragraph 5.18 then refers to the officers understanding that between 2013-2018 the Scout Group had been a stakeholder in finding a solution for the two community use buildings which had been deteriorating over time and in 2017 the Parish Council had been moving towards a joint use community building, and following public consultation, changes had been made to the design to reflect representations from the Scout Group. Paragraphs 5.19-5.20 then refer to the Scout Group's concerns articulated towards the end of 2018 and their preference for retention of the existing Scout Hut for their needs, but with Officers referring to the Parish Council's response that whilst some elements of the Scout Group's concerns could be met (such as a suitable lease arrangement negotiation and reasonable room hire fees), certain elements of the objection were challenged such as the requirement for a comparable

level of hall availability to their existing use, rather than increased hours or priority use, equivalent meeting times and days for existing Scout Groups and their corresponding ages, and challenge the available maintenance funds alongside expected subscription fees. Officers concluded paragraph 5.20 by expressing their judgment: “Notwithstanding, significant steps had been taken in terms of revisions to the design and liaising with the Scout Group to address concerns over safeguarding, cost, priority access, specialist outdoor and storage needs and to create an equivalent meeting space that met their specific needs.”

83. In short, on any fair reading of this paragraph and the context in which it is written, it is clear that officers and members would be well aware that the Parish Council’s proposals did not meet all of the requirements set out by the Scout Group, but that officers took the view that significant steps had been taken by the Parish Council do address some of their concerns.
84. This is also evident from the paragraphs that follow in which, having recognised “age” as a protected characteristic and that was a key factor in determining whether the replacement facilities continued to offer the same opportunities for younger members, the officers then considered the way in which the Scout Group was meeting at the alternative location and the consequences of the proposed new building in terms of what was on offer. Thus, for example, in paragraph 5.23 officers took the view that the replacement building would provide the Scout Group with the opportunity to meet for the same number of hours they had been meeting in 2018, but it would require the two sections that had been meeting in 2018 to meet on the same evening, rather than 4 separate slots across the week. Officers also took the view that whilst it would not be reasonable to schedule younger groups “back to back” on the same evening, it would be reasonable for the Scouts or Explorers (older age group) to meet following the Cubs or Beavers (younger age group) on the same evening. They noted this was one of the recommendations from the Parish Council and considered that it was scheduled in this way by other Scout Groups. Officers concluded in their judgment “this is an appropriate way of meeting the PSED as the equivalent groups could continue to meet in the replacement facilities, and the younger sections would not have to be scheduled at a time that prejudiced the protected characteristic of age”.
85. Moreover, in paragraph 5.25 of the report officers returned once again to the Scout Group’s preference to continue to use the Scout Hut building, but took the view that in terms of other factors that must be weighed alongside the equality objectives: “it should be noted that the Scout hut is in a poor condition and has an Energy Performance Certificate rating of G, which means it cannot currently be used. The Scouts have been using meeting space at the rugby club since February 2021.” The officers then referred to the options appraisal “(as per the consultation presentation prepared by Nortoft, April 2018)” undertaken by the Parish Council which had considered a part new/part refurbish option, and whilst the new build options were more costly, the cost of refurbishment was likely to have increased as a result of continuing deterioration. Paragraph 5.26 advised that cost was one element, but officers must also accord weight to community use policies which they stated they addressed below (as they did). They took the view that the Parish Council had demonstrated that an equivalent level of use and facilities could be provided to existing users with a replacement building.
86. In my judgment, read in context with what preceded this view, it is obvious that the



Officers and members would have had well in mind that the replacement building would not allow the Scout Group to continue all of its activities in the same way it had done, whether in 2018 (as specifically addressed), or in 2020 in terms of the increased use identified by the Claimant, or in the way the Scout Group was proposing (see for example the references as to the need for two sections that had been meeting in 2018 to meet on the same evening). Officers were reaching a qualitative judgment, as they were entitled to do in law, on equivalence of use and facilities overall. I emphasise that it is not for the Court to make such judgments, but rather a matter of planning judgment for the officers and members. Whilst there would clearly be room for different views and judgments to be reached, and it is unfortunate if the replacement building cannot meet all of the Scout Group's stated requirements at the same time as providing the opportunities for the other activities the Parish Council wishes to accommodate, I cannot discern any arguable irrationality in the judgment they reached. I do not consider it was unlawful for the Officer's Report not to go into more detail on this point including, for example, to deal with the question of increased use in March 2020 prior to the Scout Group's departure from the Scout Hut on which the Claimant now relies. This was, of course, in a context where the Scout Group had been required to leave the Scout Hut by the Parish Council in 2021 where the Parish Council did not consider it could continue to be used in its existing state.

87. Moreover, that must then be seen in light of what then followed by way of further analysis explaining the officer's view that the replacement building was justified. In paragraph 5.26 they dealt with the specific benefits of delivering more accessible changing facilities along with a "multi-use facility that can accommodate the needs of the Scouts Group and other local community groups" which they considered would collaboratively benefit the wider community. In paragraph 5.27 they identified that all of the above matters had informed their recommendations when considering the "countervailing factors" and they then confirmed that when considering the Scout Group's objections in light of the PSED, they took the view that the Scout Group would not be prejudiced "as the equivalent level of meeting space, and at suitable times, can be provided" and the improved facilities for the wider community (as a multi-use building over retention and refurbishment of the Scout Hut) also weighed into the decision which they considered to be in line with planning policies. Again, in referring to prejudice and suitability, I consider it is clear that officers were expressing their judgment on these issues, cognisant of the very different judgment reached by the Scout Group, but seeking to balance a range of considerations including the benefits of providing a multi-use building for other community groups in addition to the Scout Group. The Officers were not suggesting that this meant that the Scout Group could operate in the way it wanted, but reaching their overall judgment as to the acceptability of what was proposed.
88. In my judgment a similar fair reading of the officer's report analysing the policies in respect of provision of a community use is required of paragraphs 5.28-5.36. Officers were there setting out their judgments as to why the proposed single multi-use building for community groups (not just the Scout Group) did meet the requirements of policy and represented a significant improvement on the current facilities, introducing flexibility into the buildings to allow opportunities for use by a range of community and sports groups in the local area. The fallacy in the Claimant's approach to this part of the report and the analysis of the policy framework is to ignore the fact that officers were approach the question of community use as including more than the Scout Group

and its activities. Whilst the Scout Group is undoubtedly a significant community group, I consider that it is erroneous to ignore the officer's analysis which was considering wider community interests and reaching an overall judgment on what was proposed in terms of the relevant policy framework. Thus, for example, the officers clearly had this in mind when expressing their planning judgment at paragraph 5.35 that "The more flexible meeting space, improved storage facilities and step-free access would provide better facilities in terms of quality and accessibility." Whilst the Claimant and the Scout Group may not agree with that judgment when considered against their stated needs, I cannot discern any arguable irrationality in the officers approaching the development proposal against the policy framework in the way they did by taking account of other community group needs as well.

89. It is evident that in this respect, the aspirations of the Scout Group in terms of use of such a building will compete with other community group needs; but the acceptability overall of those competing needs was a matter of planning judgment for the officers and the District Council. As already noted, the Scout Group had no legal entitlement to use the existing Scout Hut, or the proposed new building, in any particular way; and the District Council was not under any legal obligation to ensure replication of the Scout Group's activities under the relevant policy framework. The Parish Council itself had clearly not agreed to replicate that use. The terms of the policy framework call for what are inevitably qualitative planning judgments to be made as to the replacement facilities and their potential use.
90. In those circumstances I agree that the criticisms that the Claimant now makes of the rationality of the District Council's assessments fall away, as they fail to reflect any fair reading of the officer's report and consequential planning judgments that were being made. It is clear that officers and members were well aware of, and took into account, the Scout Group's specific concerns about continued use and effects on their operations, but reached a different view. They explained why they reached that view, albeit I recognise that the Claimant does not agree with their analysis. I do not consider there to be any arguable irrationality in the approach adopted. I therefore refuse permission for Ground 1.

#### Ground 2 – Up-to-date information on Scout Group's activities

91. Under Ground 2 the Claimant variously alleges that the Planning Committee was misled its meeting by the failure of officers to provide the Committee, when implicitly invited to do so, up-to-date information as to the Scout Group's current and future operations which was said to be drastically different to the figures provided to the Planning Committee on which they relied, such that it would have been clear that the operations could not in fact be continued in the new building
92. The Claimant submits the central issue for the Planning Committee was the extent to which the Scout Group could carry out its future operations from the proposed new building and the purpose of it examining the past operations of the Scout Group was to establish whether in the future its activities could be accommodated. The Claimant argues that there was an obvious flaw with the approach taken in the Officer's Report because it relied upon what the Parish Council had said about the use of the Scout Hut in 2018, five years earlier, and not the fuller and more up to date information as to the Scout Group's operations before it was dislodged from the Scout Hut in 2021 or its current operations in 2023.

93. The Claimant refers to the fact that at the committee meeting on 26 July 2023, the chair asked the officers present why the “figures” for the usage by the Scout Group were from 2018, and asked “*is that just the only data available*”. The Claimant submits that the clear implication was that the information was not up-to-date and might now be different. The Claimant argues that was an important, necessary enquiry, because the Committee was required to assess the future needs of the Scout Group.
94. The Claimant contends that the Planning Committee was not then (as it should have been) directed to the First Schedule that had previously been provided, or the much more up to date information contained within it, or the Scout Group’s other submissions as to its current and future activities and operations and the Second Schedule. It is said that this key information also formed no part of the Committee’s deliberations, reasoning or conclusions.
95. The Claimant submits it is also clear from the remainder of the extract of the transcript from the meeting that the chair and Officer were in fact concerned with the future operations of the Scout Group, and that it is the future operations from the new building that were in issue in any event.
96. The Claimant argues that the Planning Committee was materially misled in the sense identified in *Mansell* into believing that the Scout Group’s operations were the mere four sessions identified in the Officer’s Report, and not the far more extensive operations identified in the two schedules.
97. I agree with the Defendant (for the reasons it has given) and the Deputy Judge’s observations that this ground is unarguable on proper analysis. As the transcript of the Committee Meeting identifies, the question that the relevant councillor asked was:
- “...can I just ask why we’re looking at figures from 2018 in terms of uh how many times they met for example is that just the only data available or um”
98. The question was directed at the data in 2018 and therefore related to the use of the Scout Hut. Moreover, it seems to me that the councillor was entitled to direct his query to that question. The planning officer explained in answer to that question that reference was being made to the latest figures before “it started to sort of venture into covid period”, and thereafter “the scouts um weren’t using the building anymore”. I agree that the answer was reasonable in the circumstances, as the officer was entitled to take the view that data after 2018 may have been affected by the covid period. I reject the notion that it was materially misleading, given that the question was directed to, and answered in respect of the figures as to previous use of the Scout Hut, rather than all of the Scout Group’s subsequent expanded requirements.
99. Moreover, it is apparent from the extracts already identified in the Officer’s Report that members had already been made aware of the Scout Group’s wider concerns about other uses it had made of the Scout Hut in the past beyond the meetings themselves and this would have been readily apparent from their representations.
100. Moreover, and importantly, it seems to me that this ground is necessarily unsustainable in light of the fact that the Planning Committee members had been provided by email with the Claimant’s representations. This set out the nature of the concerns in terms of past, current and future use requirements in detail, along with the

relevant schedules so that members would have been aware of information provided as to the use in 2018, 2020, subsequently and in the future. The Planning Committee members therefore had all of the relevant information on this topic available to them, but the question that was asked was reasonably answered by the planning officer in the circumstances.

101. Again, it seems to me that this ground of challenge suffers from a similar vice to that evident in Ground 1, namely the assumption that the District Council's assessment of the proposal was somehow necessarily limited to, or otherwise constrained by, a consideration of the Scout Group's stated requirements, rather than all of the matters (including the perceived desirability of use by other community groups and the inherent problems with the existing Scout Hut building) identified in the Officer's report.
102. For these reasons I do not consider it is arguable that the Planning Committee were materially misled by the answer given by the planning officer to the specific question raised and I refuse permission for Ground 2.

### Ground 3 - PSED

103. Ground 3 is the allegation that the Committee failed to have regard to the public sector equality duty in s.149 of the Equality Act 2010 on the basis that it did not consider what are said to be "the many significant adverse consequences to young people of the intended operation of the New Building, or the up-to-date operational information which demonstrated this" and instead proceeded on the basis that the Scout Group and its young people would suffer no prejudice.
104. The Claimant submits it was necessary for the Committee to "*be clear precisely what the equality implications are when [it] puts them in the balance*" (in reliance on *Hurley* at para 78) and it is said that the Planning Committee failed to identify the equality implications of the large group of young people at all and if clearly failed to have the necessary "due regard".
105. This ground of challenge necessarily suffers from the same problems that I have already identified in respect of Grounds 1 and 2, having rejected the notion that the Council arguably acted irrationally in reaching the conclusions it did in terms of planning judgment as to the effect of the development on the Scout Group balanced with other community groups, and having rejected the notion that the Council were arguably materially misled on the use of the Scout Hut or the requirements of the Scout Group.
106. Furthermore, and in any event, I regard this ground of challenge as manifestly unsustainable in light of the consideration specifically given to the PSED by the officers in the Officer's Report. I have already set out the relevant paragraphs in some detail. I am entirely satisfied that the Council did have due regard to the public sector equality duty in considering the matters it did in that section of the Officer's Report, and did so properly and conscientiously focusing on the statutory criteria, and carrying out a rigorous consideration of the duty. Moreover, in light of what is identified in the Officer's Report and the availability of information to Planning Committee members (including the representations that had been made by the Claimant himself), I consider it unarguable to suggest that the members were not properly informed before making

the decision or that they were required to acquire more information on this topic. I also consider it was made clear to members precisely what the equality implications were then it carried out its duties under s.149 of the Equality Act 2010.

107. Again, the Claimant's criticism under this heading suffers from the same fundamental problem that I have already identified. In pursuing the interests of the Scout Group and the young people it self-evidently serves, the Claimant has failed to give proper recognition to the fact that the Parish Council in seeking the development, and the District Council in considering its planning merits, were also entitled to take account of the other community interests in the creation of a replacement multi-use building with better accessibility, in circumstances where the existing Scout Hut was considered to be no longer suitable for use. In my judgment there is no arguable basis for criticising the District Council's careful consideration of the PSED, including specifically effects on the Scout Group members, when considering the planning merits of the development before them. I therefore refuse permission on Ground 3.

Grounds 4, 5 and 6 - Alleged Misinterpretation of Development Plan and NPPF policy

108. Under Grounds 4, 5 and 6 the Claimant variously alleges that the District Council misinterpreted provisions of development plan policy and national policy in the NPPF. The Claimant makes the point that logically the grounds should be articulated in reverse order, since Grounds 6 and 5 deal with development policy (having regard to the requirements of section 38(6) of the 2004 Act) and Ground 4 deals with the NPPF. Ground 6 is described as concerning a more stringent condition to be imposed on the grant of planning permission than Ground 5.
109. I will therefore deal with them in that order as suggested by the Claimant, but under one overall heading given the similar legal principles the grounds engage.
110. The Claimant submits by way of general observation, within each of the plans and policies it was necessary for the Planning Committee to consider the Scout Group's limited future operation from the proposed new building, and the harm this would cause to young people. This submission is essentially parasitic on the argument made under Ground 1, as the Claimant submits that the irrational approach under Ground 1 led to an irrational application of the principles in the policies.
111. For reasons which will be obvious, having rejected the notion that there was any arguable irrationality under Ground 1, it follows that I consequently reject this parasitic argument in respect of the approach to the policies. There was no arguable irrationality in the approach the District Council adopted under Ground 1 and therefore no consequential infection of its approach to the assessment of the development against the relevant policies. To the contrary, for the reasons I have explained, on any proper and fair reading of the analysis in the Officer's Report I consider that the District Council correctly approached the question of compliance with the relevant policies by reference to necessary planning judgments as to the suitability of the development proposed to address a number of different community needs set against the context of the existing facilities, including the unused Scout Hut which suffered from the energy rating that had been identified.
112. As to Ground 6 more specifically, and the requirements of Policy S11 of the Neighbourhood Plan, the Claimant argues it was necessary for the Officer's Report to

identify the use of the Scout Hut, and its function and it was necessary to assess whether the proposed new Building was “*suitable for carrying out the identified role of the site*” and of “*at least equal benefit to the local community in terms of ... quality and accessibility*”

113. The Claimant refers to the fact that the Defendant has submitted in paragraph 80 of its Summary Grounds for Resistance that “*The Defendant was satisfied that the proposed development would provide replacement facilities suitable for carrying out the identified role of the scout hut*”, but the Claimant argues that the Defendant did not identify the key elements of the function of the Scout Hut and the role of it and the Scout Group. In this respect, the Claimant argues that the Officer’s Report identifies the needs of the Scout Group vaguely as time on two evenings a week at unspecified times and of unspecified duration. He submits that if the Claimant did consider the “function” of the Scout Group, this seems to be its full extent and at its highest the Officer’s Report identifies “function” in a manner so limited that it does not enable the operation of the organisation that used the Scout Hut, but something far less and severely restricted.
114. The Claimant submits that the function of the Scout Hut can properly be identified as follows:
- a. It provides purpose-built facilities that meet the requirements for the Scout Group’s activities, at low cost (a peppercorn rent);
  - b. Through the protected tenancy held by the Scout Group, it guarantees access at times convenient to young people and the adults that enable their activities, including section meetings, time before and after section meetings, and for all the other activities and supporting activities such as leader meetings, kit administration and tent drying;
  - c. Through the protected tenancy the Scout Group is guaranteed flexibility to meet the specific and changing demands of its adult volunteers who all have other commitments that need to be accommodated; and
  - d. Through the protected tenancy it provides security over the long term for variations to the size of the group, and for expansion to meet demand. The operations of the Scout Group are protected for the long term.
115. The Claimant submits that none of these elements of the function of the Scout Hut is replicated in the proposed new building, where the “identified social or leisure function” has been lost, and the “identified role of the site” has not been enabled by the proposed new building.
116. The Claimant further complains that the Officer’s Report treats the operations of the Scout Group merely as one user competing with others for time to hold evening meetings, it fails to identify even the days or the times or duration of these meetings, nor ensure that this provision is guaranteed in the proposed new building. He argues that the proposed new building is intended to perform a very different function to that of the Scout Hut – this is the essence of it being made available to others at the times needed by the Scout Group – and further its intended operation is therefore incompatible with the continued operations of the Scout Group as enabled by the lease

of the Scout Hut.

117. For these reasons, the Claimant submits that the Officer's Report betrays a fundamental misconception as to what Policy SI1 required or constitutes a wholesale failure to apply the tests or is irrational in the application or fails to provide proper reasons.
118. I do not consider there to be any merit in this ground. First of all, it again suffers from the same vice that runs through all of the criticisms the Claimant is advancing, but this is more explicitly evident in the way the ground is argued. In seeking to describe the function of the Scout Hut, the Claimant refers to that function in the present tense, as if the leasehold arrangements under which the Scout Group formerly occupied the Scout Hut were continuing. But they had ceased in March 2021. The Scout Hut was no longer fulfilling those functions for the Scout Group. What is more it is fallacious to suggest that it could have done so. As the Officer's Report identified, the Scout Hut's energy rating prevented its continued use without refurbishment, and the costs of that had been investigated and considered in deciding what to do. The Claimant's analysis against Policy SI1 is therefore misconceived as a matter of principle.
119. Secondly, as already pointed out, the Claimant's analysis of this Policy and evaluative questions as to the suitability of the replacement building is necessarily trespassing on matters of judgment that were for the District Council absent irrationality. As is clear from the Officer's Report, the officers (in reasoning taken to be that of members in this case) reached their own judgment on the suitability of the replacement facilities as a community use building to serve a wider group of interests than the Scout Group. This was quintessentially a matter of planning judgment under the relevant policy and one which did not require mere replication of the existing Scout Hut, nor the same facilities it provided to the Scout Group. The fact that the Claimant does not agree with the District Council's judgment in this regard is not a valid basis for criticism as a matter of law. I cannot discern any arguable irrationality for the Council's different judgment in the Officer's Report and the reasons for reaching that judgment are self-evident from the extracts I have identified.
120. There is also no basis for suggesting that there was a failure to take it into account the policy, given that it was listed in the policies taken into account at the conclusion of the Officer's Report. The analysis provided in the Officer's Report necessarily covered the judgments to be made under the Policy.
121. As to Ground 5, and Policy CP08 of the Local Plan, the Claimant argued that the District Council considered this with paragraph 99 of the NPPF, but Policy CP08 is not as permissive as paragraph 99(c) of the NPPF and does not permit development where "*the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.*" The Claimant submits that Policy CP08 requires the replacement to be of equivalent provision to what existed beforehand.
122. In this respect, the Claimant argues that the facilities of the proposed new building cannot on a proper interpretation be "*equivalent or improved*", because they massively restrict the access by young people to the facilities they need, and the activities of the largest prior user of the site, the Scout Group in the Scout Hut. It is said that since this

part of the community will be excluded, the provision cannot be “equivalent”, equivalence is a different test from the “alternative” test in NPPF paragraph 99(c) and no access cannot be equivalent to unhindered access.

123. For these reasons, the Claimant submits that Officer’s Report either betrays a fundamental misconception as to what Development Policy 08 required and/or constitutes a wholesale failure to apply those tests or an irrational application of them.
124. I do not consider this ground of complaint to have any merit either. Even if Policy CP08 does impose a more exacting test than paragraph 99 of the NPPF, it makes no difference in this case. The question of equivalent or improved replacement is a matter of planning judgment. On any fair reading of the Officer’s Report the officers were reaching a view that the replacement facility proposed would be better overall (taking account of wider community use) for the reasons they gave. There is nothing irrational in that judgment, given what they stated about the current problems with the existing buildings and the benefits of the proposed replacement building in terms of meeting the needs of the community generally and improved accessibility. Again, the real problem with the Claimant’s challenge is that it fails to recognise that the District Council were looking at the policy in that way, and they were entitled to do so as a matter of its specific terms.
125. The Claimant’s reliance on Sport England’s guidance does not assist the Claimant as it is not applicable in the way the Claimant suggests and Sport England had removed its objection to the development proposal as the officer had noted.
126. Accordingly, I regard this ground of challenge to be unarguable and I refuse permission for it.
127. As to Ground 4 and paragraph 99 of the NPPF, the Claimant argues that limbs (b) and (c) are mutually exclusive, such that either the proposed new building had to provide “*equivalent or better provision*” to that which had been lost (limb “b”), or the provision was “*alternative*” provision, “*the benefits of which clearly outweigh the loss of the current or former use*” (limb “c”). The Claimant notes that the Officer’s Report seems to have concluded that both were satisfied, but complains that it failed to identify the “loss”, thereby critically impairing the comparative exercise it was required to undertake. The Claimant therefore argues for the similar reasons it has already advanced previously including under Ground 1, the District Council’s approach was wholly inadequate and a serious misunderstanding of what the Scout Hut provided. The Claimant submits that the District Council also concluded that the loss was met by the proposed new building, but where it had failed to identify a loss to which limb “c” would attach, and it had failed to identify the real loss (as set out in Ground 1).
128. The Claimant argues that by conflating the two tests and failing to identify the “loss”, the Officer’s Report betrays a fundamental misconception as to what paragraph 99 required, and/or constitutes a wholesale failure to apply those tests or an irrational application of them.
129. I have no hesitation in rejecting these criticisms of the approach to, and application of, paragraph 99 of the NPPF on the facts of the case. For the reasons already explored extensively above, I consider it unarguable that the District Council



erred under Ground 1 and therefore the parasitic element of the complaint under paragraph 99 of the NPPF similarly falls away. Again, the Claimant's challenge is misconceived because it fails to recognise the nature of the evaluative judgment the District Council was exercising under both limbs of paragraph 99 of the Framework. The terms of that analysis in the Officer's Report provide clear reasons for what is a rational judgment as to the acceptability of the proposed replacement having considered the existing buildings on the Site and their function. The Officer's Report reached a clear conclusion that the officers consider the requirements of paragraph 99 of the NPPF to be met and that was a view that was rationally open to them on the evidence and analysis set out. The Defendant did articulate their judgments as to "the current or former use" of the existing buildings whose loss fell to be weighed against the benefits of the proposal, as can be seen from paragraph 5.31-5.35 of the Officer's Report. I agree with the Defendant that the reality is that the Claimant's objections are really that the Defendant did not conduct the balancing exercise in the way he would have liked and did not reach the conclusion that he believes to be correct, but that is not an arguable basis for a claim for judicial review.

### **Ground 7 - Condition**

130. Finally, under Ground 7 the Claimant argues that the Council failed to impose a condition or require a planning obligation to provide the minimum level of provision offered by the Parish Council even though this had been recommended by the District Council's leisure officer.

131. In this respect, the Claimant refers to that recommendation as being:

*"In light of these concerns, my view is that further discussions need to be had between the applicant (North Hinksey Parish Council) and the 4th Oxford Scout Group before a decision is made on this planning application, so that a draft Community Use Agreement can be drawn up which satisfactorily addresses the current/future needs of both the Scout Group and other local community uses. The Agreement could then be secured by way of a planning condition, if the Council was minded to approve the application."*

132. The Claimant submits it was self-evidently appropriate to secure such a planning condition, or to explain why the interests of the largest intended user need not be secured or were not material. It notes that the recommendation was removed from the Council's website without explanation, and it was not addressed in the Officer's report and contends the failure was irrational.

133. As the Defendant points out, to be valid any condition imposed would need to be for a planning purpose and would need fairly and reasonably to relate to the development permitted and be reasonable in all other respects. The need for a planning condition is, again, quintessentially a matter of planning judgment. The Claimant therefore needs to show that the Defendant's decision not to impose such a condition is arguably irrational.

134. In my judgment the Claimant is unable to show any such arguable irrationality. There was no legal agreement between the Parish Council and the Scout Group as to the use of the proposed new building, nor any in-principle understanding about that use, and there were no existing activities taking place on the Site. I do not consider

there to be any arguable basis for contending that the Defendant was somehow required to ensure that the Parish Council had to ensure that any particular level of scouting activity took place in the proposed new building, particularly given the nature of the Scout Group's objections suggesting that it would not be able to continue its activities there.

**Section 31(3C) and (3D) of the Senior Courts Act 1981**

135. Finally, the Defendant has required the Court to consider the application of section 31(3C) and (3D) of the Senior Courts Act 1981 and to conclude that if the alleged errors complained had not occurred, the outcome would not have been substantially different, such that the Court should consequentially refuse to grant permission. The Defendant makes this submission on each and every ground.
136. Whilst I am entirely satisfied that the grounds of challenge are unarguable for the reasons identified above, I find it difficult to understand how the Defendant advances its case under these provisions on each and every ground. For example, it is difficult to see how the Defendant invites the Court to reach the conclusion required under those provisions where, under Ground 1, the complaint is essentially that of irrationality. The assumption would have to be that if the alleged error of irrationality under Ground 1 had not occurred, the outcome of the Council's assessment of the proposal would not have been substantially different, but that is difficult to understand conceptually. Moreover, given that the other grounds of challenge are, to a considerable degree, parasitic or incorporate the sort of rationality challenge made under Ground 1, it is difficult to see how the Defendant is arguing these provisions would apply to the other grounds.
137. In the circumstances, I am not persuaded that this is a case where the test under section 31(3C) and (3D) is met on any of the grounds. This does not affect my earlier conclusion that each of the grounds of challenge is unarguable and I refuse permission accordingly.