Neutral Citation Number: [2020] EWHC 1511 (Admin)

Case No: CO/3720/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Manchester Civil Justice Centre
1 Bridge Street West
Manchester

Date: 11/06/2020

Before :

MR JUSTICE DOVE

- -

Between :

QM DEVELOPMENTS (UK) LIMITED	**Claimant**
- and -	
WARRINGTON BOROUGH COUNCIL	**Defendant**

- -
- -

Ms Sarah Clover (instructed by **Louise Goodwin of Primas Law**) for the **Claimant**
Mr Andrew Fraser-Urquhart QC (instructed by **Warrington Borough Council**) for the **Defendant**

Hearing dates: 19th March 2020

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Approved Judgment

Mr Justice Dove :

Introduction

1. This judicial review challenges the incorporation of what is known as an informative into a certificate of lawfulness of existing use or development ("a CLEUD") which was issued by the defendant in relation to a development at Hunters Lane, Risley, Warrington. The claimant contends that the incorporation of the informative was unlawful, and seeks an order quashing the grant of the CLEUD on the basis of the inclusion of the informative, and a mandatory order requiring the defendant to grant the CLEUD without it.

2. It is necessary, firstly, to set out in brief the facts pertaining to this particular case. Thereafter, the grounds can be set out in brief including, in particular, the defendant's procedural objections to the application for judicial review being entertained by the court at all. The court's conclusions are then set out.

The facts

3. The claimant is a construction and development company which acquired the land at Hunters Lane, Risley, Warrington for the purposes of development in 2003. On the 26 November 2007 the claimant applied for planning permission for the development of two bungalows to replace a lawful dwelling, a lawful mobile home and other built development. The application was referred to a planning officer, Mr Jason Lewis, for him to consider its merits, and in due course he produced a Delegated Officer Report in relation to the determination of the application since the matter was not one which required referral to the defendant's planning committee. During the course of his consideration of the application he received an internal consultation from the defendant's Environmental Health and Protection Manager, which amongst other matters drew attention to the fact that the site might be contaminated, and to the need for a contaminated land investigation to be undertaken without delay. A further internal memorandum dated 12 February 2008 confirms that the Environmental Protection Officer, having considered the Preliminary Risk Assessment, was of the view that a full site investigation needed to be undertaken in respect of contaminated land. On 15 April 2008 Mr Lewis completed his Delegated Officer Report, and having assessed the planning merits, formed the conclusion that planning permission should be granted subject to conditions. The conditions which were proposed for the permission included a condition which had been recommended in the consultation from the defendant's Environmental Health Department in respect of the need for an investigation in relation to contaminated land.

4. Planning permission was granted on 16 April 2008 and amongst the conditions which were imposed was condition 6, which provided as follows:

> "6. No part of the development hereby permitted shall commence until the following measures have been completed to the satisfaction of the LPA.
>
> (a) an investigation and assessment methodology, including analysis suite and risk assessment methodologies shall be

> agreed in writing with the Local Planning Authority. This shall be done prior to site investigations.
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> (b) a site investigation and assessment shall be carried out by the appropriate qualified and experienced personnel to determine the status of contamination [including chemical/radiochemical/flammable or toxic gas/asbestos/biological/physical hazards/other contamination]. This shall be submitted to the Local Planning Authority. The investigations and assessment shall be in accordance with current Government and Environment Agency recommendations and guidance and shall identify the nature and concentration of any contaminants present, their potential for migration (including its potential for the pollution of the water environment) and risk associated with them.
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> (c) A remediation scheme shall be agreed with the Local Planning Authority. It shall include an implementation timetable, monitoring proposals and remediation validation methodology as well as appropriate measures to prevent pollution of groundwater and surface water, including provisions for monitoring.
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> (d) the remediation scheme shall be completed to the satisfaction of the LPA before development commences. The remediation undertaken shall be in accordance with the proposed remediation strategy, and accurate documentary evidence shall be maintained. This shall be summarised along with validation testing as part of a site completion report. If any variation is found the Warrington Borough Council Environmental Health Section shall be notified immediately.
>
> (e) a written confirmatory sampling and analysis program shall be agreed in writing with the LPA. This should include an appropriate risk assessment of the site in the form of a completion report to confirm the adequacy of remediation."

5. In September 2009 Peak Associates, who had been commissioned by the claimant, submitted a Geo-Environmental Investigation Report which they had undertaken in relation to the site. The report described that the primary aim of the investigation was to address relevant parts of condition 6 on the planning permission which had been granted on 16 April 2008. One of the conclusions of the investigation was that there would be no need for any additional gas protection measures in relation to the proposed residential development. In subsequent correspondence with the Environmental Protection Officer dated 2 October 2009, Peak Associates indicated that the claimant accepted that the issues raised by the planning conditions relating to ground conditions had to be resolved before works could commence on the site. It appears from the correspondence that the Environmental Protection Officer was not satisfied by the extent of the gas monitoring which had been undertaken in order to produce the report. Further gas monitoring was proposed along with other construction features to address the concerns which had been raised in respect of the

report and its shortcomings in the view of the Environmental Protection Officer. A dialogue continued between the defendant's officers and the representatives of the claimant in relation to the discharge of condition 6 so as to enable development to be commenced. Ultimately, on 13 October 2009 Mr Lewis sent an email to Paul Palgrave of Peak Associates following a conversation with him in the following terms:

> "Further to our telephone conversation this morning, I confirm that in light of the constraint relating to the timing of remediation, the Council has no objection to the development commencing pending the discharge of elements (C) and (D) of condition 6 of planning permission 2007/12062".

6. Following this exchange of correspondence on the 4 November 2009 Mr Palgrave wrote to the claimant indicating that, whilst the planning officer was satisfied that development might proceed, it was accepted that condition 6 relating to contamination issues "cannot be formally discharged until the development is complete". He went on to indicate a number of additional enquiries and design features necessary to satisfy the requirements of the Environmental Protection Officer.

7. In fact the development was not commenced at this stage. A further application for full planning permission was made on 12 March 2010 which differed in some respects from the development which had been granted planning permission on 16 April 2008 in relation to the size of the application site and the detailed design of the dwellings, but was essentially similar in that it proposed the erection of two dwellings on the site. Planning permission was granted pursuant to this application on 17 May 2010. The planning consent was granted conditionally, and a condition was included in identical terms to condition 6 on the earlier planning permission. It appears that, after this permission was granted, development commenced on the site leading to the construction of two dwellings. It appears that following a successful marketing campaign the dwellings were sold, and, in particular, one of the dwellings was purchased by a Mr and Mrs Brown. It seems that their purchase was completed on 9 December 2015.

8. Subsequent to acquiring the property Mr and Mrs Brown became involved in a dispute with the claimant. The full nature and details of that dispute are not before the court, but the essential elements appear to relate to Mr and Mrs Brown's dissatisfaction with the property they purchased, including amongst the elements of that dispute the contention that the claimant failed to discharge the requirements of condition 6 in relation to either planning permission, and their view that without being able to demonstrate the discharge of the condition the property is not capable of being resold. In the light of their disagreement with that suggestion it appears that the claimant sought to resolve the question of whether or not there was any defect in the planning status of the dwellings by making an application for a CLEUD, initially on 27 November 2018. The development in relation to which the CLEUD was sought was described in the application as:

> "Use of land for residential purposes Inc construction and occupation of 2 number detached dwellings together with access roads"

9. The basis for the application was said to be that the building works involved in the development were substantially completed more than four years prior to the date of the application, and the use as dwelling houses had begun more than four years before the date of the application and were therefore immune from enforcement (see section 171A of the Town and Country Planning Act 1990). Other grounds were provided in the following terms:

> "Planning permission was granted for the development but it is alleged that pre-commencement conditions were not discharged. This application seeks to make the development 'lawful'

10. Whilst the defendant undertook its own investigations in relation to the application, the claimant (as it was entitled to do) chose to appeal to the Secretary of State in relation to that application on the basis of non-determination as the defendant had not issued a decision in accordance with the statutory time limits. That appeal is still pending, and it appears from an email from the Planning Inspectorate that it is caught up in a backlog of work and still awaiting determination.

11. On 3 June 2019 the claimant submitted a further application for a CLEUD, describing the development for which the certificate was sought and the grounds for seeking it in the same terms as previously. The application was considered and investigated by one of the defendant's planning officers. That officer prepared a Delegated Officer Report setting out investigations and conclusions in relation to the application for consideration by Ms Nicki Gallagher, a more senior officer of the defendant entitled to exercise delegated powers in relation to applications of this sort. Various observations and objections were made in relation to the application. The Delegated Officer Report noted that in relation to pre-commencement conditions an application had been made in respect of conditions 3 and 4 on the 2007 planning permission, and that these conditions had been discharged in full. She also noted that in respect of condition 6 there had been email correspondence with Mr Lewis suggesting that the pre-commencement condition relating to contaminated land had been discharged "in part subject to the future discharge of elements (c) and (d)". It was concluded that the development had not been commenced in breach of condition, on the basis that there was no evidence that pre-commencement conditions on the 2007 planning permission had not been discharged, and that the pre-commencement conditions on the 2010 planning permission were in identical terms. It was therefore concluded that on the basis that the conditions on the 2007 planning permission had been discharged, those on the 2010 planning permission and also been similarly discharged. Further issues arose as to the compliance of the development as constructed with the approved plans. The Delegated Officer Report concluded that nothing turned on this issue. On the basis that the development had not been commenced in breach of condition, and had been constructed in accordance with the approved plans, the Delegated Officer Report determined that there was no need for reliance upon any application of the four-year-rule as there had been no breach of planning control. The recommendation in the Delegated Officer Report, which was accepted by Ms Gallagher and acted upon, was that the certificate should be granted.

12. As a result of these deliberations on 6 August 2019 the CLEUD which is the subject matter of these proceedings was issued. It recorded that the use and development identified in the application was lawful on the basis that it represented the lawful implementation of the 2010 planning permission which was itself based upon the previous approval granted in 2007. The CLEUD also included an informative in the following terms:

> "Whilst planning permission 2010/16124 was lawfully implemented, condition 6 attached to that permission was not fully discharged and will require the submission of additional details."

13. Ms Gallagher, in her witness statement before the court, sets out as follows as to why the informative was included by her in the CLEUD in the following terms:

> "84. The issue that confronted me was principally whether condition 6 on the 2010 permission had been discharged in its entirety. To my understanding we had no compelling evidence that sufficient remediation work had taken place so had to conclude that the potential that the site was still contaminated and therefore posed a risk to human health remained. I do not recall seeing any information submitted with the application that would have allowed me to conclude that the contamination issue had been addressed.
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> 85. The reason for the informative was based on the conclusion that we had no way to conclude that sufficient remediation had taken place. My ultimate concern was that remediation had not taken place on this site.
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> 86. That presented me with a difficult decision. Had this been a stand-alone application where no previous planning applications for the land had been granted had I been presented with an application for a CLEUD where there was no evidence that pre-commencement conditions had been discharged I would have refused the application.
>
> 87. This case was more complicated because of the 2007 application, Mr Lewis's email of 2009 and the fact that the 2010 application related to a small plot of land within a larger plot of land. Given this factual scenario, the council obtained external legal advice concerning this because we wanted to ensure that we made a legally compliant and reasonable decision.
>
> 88. This led me to the view that in sending his email in 2009 Mr Lewis had part discharged condition 6 and specifically subsections (a) and (b) and as a result the council had to accept by 2010 that those subsections have been discharged.

> 89. As previously mentioned, the reality is that Mr Lewis's email was sent in 2009 to assist this developer in response to comments made about the need to secure financing that could only be achieved if authority to commence development was given. The council in trying to assist a developer agreed to allow development to commence but that agreement was contingent on conditions 6(c) and (d) still being evidenced
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> …
>
> 92. The only way to deal with the failure to discharge condition 6 subsections (c), (d) and (e) was, in my view, by the inclusion of the informative. The aim was to give information and raise awareness that the conditions had not been discharged. The concern of course was contamination of land and the potential risk posed to human health. I did not consider that the council could just ignore this fact and concluded that it had to be raised in some way.
>
> 93. Even if the informative was not included in the CLUED it would not have changed the council's views in this matter. The council still considers that condition 6 subsections (c), (d) and (e) are not discharged."

14. During the course of the consideration of the second CLEUD application, on 5 July 2019 Mr and Mrs Brown submitted their own application for planning permission in respect of their dwelling. The application was, in effect, an application for the retention of a detached dwelling with its associated driveway. Amongst the consultation responses to the application was one from the defendant's Environmental Protection department, which indicated that a detailed and bespoke contaminated land condition was recommended and that its requirements should be carried out within 52 weeks of the grant of permission. In the Delegated Officer Report on the application it was noted under "Human Health Issues" that the contaminated land condition attached to both the 2007 and 2010 applications had not been fully complied with, although that was a matter which was a part of these proceedings at the time when the application was being considered. The planning officer noted the recommendation of the Environmental Protection Officer that a condition should be imposed requiring further investigation and details to be submitted and implemented. Planning permission was granted by the defendant on 15 October 2019 subject to conditions requiring further investigation in relation to ground gas, and the development of a remediation and validation strategy to be submitted in writing and approved by the defendant, and thereafter completed within a specified time scale.

15. A third application for a CLEUD has been made on behalf of the claimant. This application is based upon the contention that the dwelling owned by Mr and Mrs Brown is lawful, and that condition 6 was never valid or lawful and, given the method of construction described in the approved planning application condition 6 could never have been technically implemented. Moreover, it is argued that the dwelling has

incorporated all necessary remedial works to address the issues with which condition 6 was engaged. This application remains undetermined by the defendant.

The procedural issue and the grounds in brief

16. The central complaint of the claimant, as set out in the submissions of Miss Sarah Clover who appears on their behalf, is that there is no justification for the inclusion of the informative on the grant of the CLEUD made on 6 August 2019. The claimant contends that it was clear that the purpose of the CLEUD was to resolve the issues arising in relation to the discharge of the ground contamination condition, condition 6, and that whilst the lawfulness of the development has been resolved by the issuing of the CLEUD, any benefit to be derived from it being granted has been entirely obviated by the imposition of the informative suggesting condition 6 had not been fully discharged. The claimant contends that there is no legal basis for the informative. Firstly, the claimant contends that it was entitled to a determination under the four-year-rule, on the basis that if the development had been commenced without compliance with a pre-commencement condition than the whole of the development is to be regarded as unlawful. Although the defendant determined the application on the basis that the development had been undertaken in accordance with the planning permission which had been granted, the claimant was entitled to a favourable conclusion on the alternative basis that as a result of the passage of time the development was lawful. Secondly, the claimant contends that it was irrational and therefore unlawful for the defendant to impose the informative. As set out above, the imposition of the informative removes the reassurance to which the claimant was entitled from the CLEUD that the development was lawful. Thirdly, there was no proper basis for the defendant to conclude, as it appears they did, that Mr Lewis had by his email converted condition 6 from a pre-commencement condition to a post-commencement condition. He had no power to do so and did not in fact purport to be amending the condition in any way in his communication with the claimant's representatives. This interpretation of the effect of Mr Lewis's email is simply not open to the defendant. For all these reasons it is submitted that the claimant is entitled to have the CLEUD containing the informative quashed, and a mandatory order made requiring the defendant to issue a CLEUD without the informative included in it.

17. On behalf of the defendant, Mr Andrew Fraser-Urquhart QC submits that there is a preliminary and fundamental objection to the claimant's application for judicial review. Firstly, he submits that the court should not entertain the application on the basis that an informative (whether on a CLEUD or any other type of formal planning decision documentation) is of no legal effect and nothing more than an expression of the defendant's view, without any binding or determinative effect so far as any of the claimant's rights are concerned. Secondly, Mr Fraser-Urquhart submits that this application should not be entertained by the court on the basis that the claimant has alternative remedies which should be pursued rather than deploying an application for judicial review. He contends that the civil action between the claimant and Mr and Mrs Brown is one of the routes which could be used to pursue this issue, as well as pursuing the appeal as a means of securing a CLEUD without any informative upon it. Finally, he submits that on the basis that Mr and Mrs Brown now have their own

planning permission which is subject to similar conditions, in any event, the dispute is effectively moot. With respect to the substance of the claimant's case, Mr Fraser-Urquhart submits that condition 6 and in particular elements (c), (d) and (e) still exist and have not been discharged. As to the effect of what Mr Lewis did in his email Mr Fraser-Urquhart submits that either what he did was unlawful and the conditions remain in place and the development was not lawfully implemented, or alternatively what Mr Lewis did was lawful, has not been impeached in any legal proceedings and therefore the elements of the condition remain. In other words, either the position as articulated on the certificate by the informative is correct, or, alternatively, the development was never lawful, and a certificate ought not have been granted.

Conclusions

18. The power to apply for a CLEUD is provided by section 191 of the Town and Country Planning Act 1990 which provides as follows:

> "191 (1) if any person wishes to ascertain whether-
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> (a) any existing use of buildings or other land is lawful;
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> (b) any operations which have been carried out in, on, over or under land lawful; or
>
> (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.
>
> (2) for the purposes of this Act uses and operations are lawful at any time if-
>
> (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission because the time for enforcement action has expired or for any other reason); and
>
> (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force
>
> …
>
> (4) if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description is modified by the local planning authority or a description

> substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

19. The section goes on to identify the information which a CLEUD should contain. Under section 195 provision is made for an applicant to appeal to the Secretary of State where either the application is refused or the local planning authority do not give notice within the requisite period for determining the application.

20. As set out above the claimant raises a number of issues in relation to the question of whether or not the defendant had a proper legal basis for including the informative in the CLEUD. It is common ground that there is no statutory power to include informatives within documents recording determinations under the 1990 Act and that such an informative is of no legal effect whatever. The fact that decision-takers include such informatives in decision notices is acknowledged in the provisions of the National Planning Practice Guidance which gives the following advice:

> "What status do informative notes appended to decision notices have?
>
> Informative notes allow the local planning authority to draw an applicant's attention to other relevant matters-for example the requirement to seek additional consents under other regimes. Informative notes do not carry any legal weight and cannot be used in lieu of planning conditions or a legal obligation to try and ensure adequate means of control for planning purposes."

21. Prior to dealing with the claimant's contention that the defendant had no proper legal basis for the opinion expressed in the informative it is, in my view, necessary to deal with the defendant's preliminary contentions in relation to whether or not the court should entertain this application for judicial review at all. The first point to be considered in relation to this preliminary issue in the case is whether or not the claimant has alternative remedies available in relation to seeking a determination of whether or not there is a proper legal basis for the opinion set out in the form of the informative attached to the CLEUD. The principal that judicial review is a remedy of last resort, and that the court should not consider an application for judicial review in circumstances where a claimant has an appropriate alternative remedy, is well established. For instance, in the case of *R (on the application of Willford) v Financial Services Authority* [2013] EWCA Civ 677, giving a judgement with which the other members of the Court of Appeal agreed Moore-Bick LJ observed as follows:

> "36. The starting point, as emphasised by cases such as *Preston, Calveley, Ferrero, Falmouth and Davies*, is that only in exceptional cases will the court entertain a claim for judicial review if there is an alternative remedy available to the applicant. The alternative remedy will almost invariably have been provided by statute and where Parliament has provided a remedy it is important to identify the intended scope of the

> relevant statutory provision. For example, in the context of legislation to protect public health the court is very likely to infer that Parliament intended the statutory procedure to apply, even in cases where it is alleged that the decision was arrived at in a way that would otherwise enable it to be challenged on public law grounds, because it enables the real question in dispute to be decided. That will be particularly so if the procedure allows a full reconsideration on the merits of a decision which has direct implications for public health and safety. A remedy by way of judicial review, although relatively quick to obtain, simply returns the parties to their original positions. It does not enable the court to determine the merits of the underlying dispute. In a few cases strong reasons of policy may dictate a different approach: see *R v Hereford Magistrates' Court, ex parte Rowlands*; but such cases are themselves exceptional and do not in my view detract from the general principle. Ultimately, of course, the court retains a discretion to entertain a claim for judicial review, but whether it will do so in any given case depends on the nature of the dispute and the particular circumstances in which it arises."

22. The questions which therefore arise are as to whether or not the claimant, firstly, has an alternative remedy in the present case as contended by the defendant, and, if so, whether there are any exceptional circumstances which would justify the court considering the application for judicial review in the present case. The answer to the first question is, in my judgment, clear: the claimant does have alternative remedies in relation to resolving its complaint in respect of the basis for the imposition of the informative on the CLEUD. Firstly, it has available to it an appeal to the Secretary of State, a remedy which the claimant has taken up in respect of the first application for a CLEUD, and which remains open to it on the basis that the appeal is awaiting determination. That appeal will be determined on the basis of an examination of the full merits of the application, including all of the arguments raised by the claimant that it is entitled to the CLEUD on the basis that either condition 6 was not lawful from the start, or, alternatively, the development is now lawful on the basis of the four-year-rule. It will be open to the claimant to contend that a CLEUD should be issued free from any informative of the kind which was included by the defendant when determining the second application.

23. During the course of argument Miss Clover accepted that the appeal that was pending before the Planning Inspectorate did provide the claimant with an alternative remedy. She contended, however, that there were exceptional circumstances which justified the court entertaining the claimant's application for judicial review. Firstly, she submitted that the claimant was in an impossible position, because it needed to have an answer to the question as to whether or not the informative had a lawful basis and that answer could only properly be delivered through an application to the Administrative Court for judicial review. Secondly, she contended that the civil case pending between her client and Mr and Mrs Brown was not capable of competently dealing with the issues of planning law which arose, and that, therefore, in an area of law which was technically complex it was necessary for the Planning Court to resolve those issues.

24. I am unable to accept that there are any exceptional circumstances in the present case which would justify the court considering this application for judicial review, in circumstances where, in my judgement, taking the matter to appeal is capable of providing the claimant with an adequate alternative remedy. Firstly, the provisions of the 1990 Act in section 195 contemplate that such a remedy should enable the claimant to obtain the CLEUD in the terms which the claimant considers appropriate through an appeal process in circumstances where, as here, the defendant has reached no decision on the application. Whilst under section 195 (1)(a) of the 1990 Act the opportunity to appeal only arises where an application is refused all or refused in part, under section 195 (1)(b) an appeal against non-determination is provided, and it is that opportunity which the claimant has taken up in respect of the first application and which is still awaiting decision by the Planning Inspectorate. That will be a full determination on the merits of the application and is clearly an alternative to this application for judicial review. Moreover, it should be observed that the appeal will be determined by one of the Planning Inspectorate's specialist inspectors, experienced in dealing with enforcement and appeals in relation to CLEUD applications, who will be fully versed and informed in relation to the kinds of legal issues which are raised in the present case by the claimant. The framework of the legislation provides the opportunity for legal questions of the kind raised by the claimant to be determined on appeal by an Inspector, along with any associated factual disputes, subject only to supervisory jurisdiction by the court in respect of errors of law. I see no justification in the present case for bypassing the mechanisms in the statutory framework for determining questions of the kind raised in this application by permitting them to be raised in the context of this judicial review.

25. The second reason offered by the claimant also engages what is, in my view, an alternative remedy open to the claimant. Whilst the full details of the civil dispute between the claimant and Mr and Mrs Brown is not before the court, it is clear that part and parcel of that litigation involves the question of whether or not there are parts of condition 6 on either or both of the planning permissions which remain to be discharged. That question is an issue which it appears that the court before which the civil dispute is proceeding is seized. In my view there is no reason why that court is unable or lacks the expertise to resolve that dispute. It is always open to that court to make particular provision in relation to the expertise of the judge hearing the case to make specific directions in that regard if that is considered appropriate. There is no reason in principle to suggest that the court considering the civil claim is not capable of being suitably equipped to deal with the resolution of the questions of planning law which are raised by the claimant in this case. Thus, I am satisfied that there are no exceptional circumstances which would justify the court considering the application for judicial review in the present case.

26. In the light of these conclusions there is no need to resolve the defendant's other objection to the court considering this application, namely that the imposition of an informative, which has no legal effect, is not justiciable. In the circumstances I propose to only offer brief observations on the point for the sake of completeness. I can see force in the submissions made by Mr Fraser-Urquhart in this connection, but principally on the basis that the status of the informative renders the essential subject matter of this application moot and without substance. It is clear that the claimant seeks to bring this case in order to obtain relief in the form of the removal of the informative from the CLEUD issued by the defendant. That relief is for the purpose, it

is clear, of improving the claimant's position in relation to the civil action between itself and Mr and Mrs Brown. However, leaving aside the observations above about the ability of this question to be resolved in the civil litigation itself, the existence of the informative can in any event have no realistic bearing on that case since, as is common ground, the informative is of no binding legal effect and is simply the expression of an opinion by the defendant in relation to the status of condition 6 on the planning permissions. The absence of any legal effect arising from the inclusion of the informative renders this application somewhat arid. The existence of the subsequent planning permission by Mr and Mrs Brown, containing conditions requiring the investigation and implementation of a remediation strategy in respect of land contamination and ground gas, reinforces the position in respect of the substance of the question in relation to whether further remediation investigation and works are required as a consequence of the planning history of the site at present. Certainly, there would need to be far stronger reasons to justify this court becoming involved in the question of whether or not an informative should have been included in the record of a planning decision than are advanced in the present case, namely the desire to have the justification for its inclusion examined in circumstances where that examination appears to be in issue in separate litigation being pursued in another case based upon the planning history of the site at an earlier point in time.

27. It follows that for all of these reasons I am satisfied that it would be inappropriate for the court to entertain this application for judicial review. In the result the claimant's application must be dismissed.