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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

_____

AN APPLICATION BY JOHN HILL
FOR JUDICIAL REVIEW

_____

WEATHERUP J

The application

[1] This is an application for judicial review of a decision of the Planning Service of the Department of the Environment for Northern Ireland dated 27 January 2006 granting planning permission to Ballywalter Bowling and Recreational Club ("the club") for the development of a new clubhouse at 12A Springvale Road, Ballywalter, County Down. The applicant is a neighbour of the club who resides at 14 Springvale Road, Ballywalter, County Down. Mr Beattie QC appeared for the applicant, Mr Maguire QC appeared for the respondent, the Planning Service, and Mr Scoffield appeared for the notice party, the club.

The grounds for judicial review

[2] The applicant's grounds for judicial review require consideration of two issues, described by the parties as "the roads issues" and "the planning policy issue". The roads issue was stated as follows:-

> "The Department permitted the [visibility] splays in the absence of any speed survey or assessment of the

> actual speeds recorded on the road network (as adjusted in accordance with guidance).
>
> The Department further failed to have regard for the fact that exceptional circumstances that might permit a reduction of sight splays do not exist at the locus and that in any event the distances permitted fell far below the minimum permitted distances.
>
> The Department sought to relax splays beyond that permitted in the relevant policy without any evidence upon which to ground such an approach."

The planning policy issue was stated as follows:-

> "The Department failed to apply planning policy PPS 8 to the notice parties planning application; alternatively it failed to consider whether PPS 8 applied to the application or whether its terms were relevant to the decision whether to grant planning permission."

[3] The applicant obtained leave from Morgan J on an aspect of the roads issue and on the basis that the applicant may wish to amend the grounds to take account of recent expert evidence from the applicant's roads engineer. The applicant appealed to the Court of Appeal against the refusal of leave on any other ground and the Court of Appeal granted leave on the planning policy issue. The applicant then issued an amended Order 53 Statement which included the proposed new grounds in relation to the roads issue. However the applicant never sought leave on the amended roads issue grounds until the substantive hearing. In the event leave was granted at the substantive hearing.

[4] Two matters of practice might be noted. First an application to amend the grounds on which leave has been granted should be completed before the substantive hearing. This might be undertaken by consent where the parties agree the terms of the amendment, subject to the Court approving the terms of the amendment or requiring a hearing to resolve difficulties, or alternatively by a renewed inter partes leave hearing. Only when the grounds on which leave has been granted have been clearly established in this manner is the respondent (and where appropriate any notice party) in receipt of appropriate notice of the grounds that have to be met. To proceed to the substantive hearing without obtaining leave for proposed amendments risks refusal of leave to amend or adjournment to permit the respondent and/or notice parties to file affidavits in reply to the amendment. Secondly, after the grant of leave, the Order 53 Statement served on the parties should

identify those grounds on which leave has been granted, with such amendments as have been allowed upon the grant of leave being marked in the manner of amendments, and should identify those grounds on which leave has been refused by putting a line through the refused grounds so as to permit the refused text to be read. In this manner the process of the grant or refusal of specific grounds can be identified as the application proceeds.

The grant of planning permission

[5] The club lodged its application for planning permission on 16 August 2004 for "New purpose built premises for Ballywalter Bowling and Recreational Club. Games hall for indoor sports, function rooms for public entertainment. Associated ancillary accommodation". The proposal involved an increase in floor space from 172 square metres to 685 square metres. On behalf of the respondent the development control officers report of 1 August 2005 recommended refusal of planning permission as the nature and scale of the proposed development was considered to be inappropriate in a countryside protection area. The respondent's Development Control Group accepted that recommendation for refusal on 1 August 2005. On 2 November 2005 an amended scheme was forwarded to the respondent and on 22 December 2005 the Development Control Group changed the opinion to recommend approval. The change of approach was based on the reorientation and redesign of the proposal. Planning permission was granted on 27 January 2006.

[6] The applicant was neighbour notified about the club's proposal and such was his level of concern that he engaged architects to act on his behalf. Letters were written to the respondent in relation to the club's proposal and representations were made in relation to both the roads issues and the planning policy issue. The respondent did not acknowledge receipt of any of the six letters sent on behalf of the applicant. This was at least discourteous, but the persistent failure to reply to the applicant encouraged him to believe that his representations were not being taken into account and that the efforts of the respondent were directed to facilitating the club.

[7] The applicant contends that the respondent did not made adequate enquiries in order to satisfy itself on the roads issue and the planning policy issue. In Bow Street Mall's Application [2007] NIJB 25 Girvan J set out at paragraph [43] a number of relevant legal principles in relation to challenges to planning decisions and these included:-

> "(f) If a planning decision maker makes no inquiries its decision may in certain circumstances be illegal on the grounds of irrationality if it is made in the absence of information without which no reasonable planning authority would have granted

permission in (R v Westminster Council ex parte Monahan [1989] 2 All ER 74 at 101 per Kerr LJ). The question for the court is whether the decision maker asked himself the right question and took reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly (Secretary of State for Education and Science v Thameside MBC (1977) AC 1014 at 1030 per Lord Diplock)."

The roads issue

[8] Vehicular access standards find expression through Planning Policy Statement 3 (PPS 3 revised February 2005) on "Access, Movement and Parking". As the introduction to PPS 3 states, the PPSs set out the policies of the Department on particular aspects of land use planning and their contents are material to decisions on individual planning applications. PPS 3 includes Policy AMP2 which deals with "Access to public roads" and states:-

> "Planning permission will only be granted for development proposal involving direct access, or the intensification of the use of an existing access, onto a public road where –
>
> (a) Such access will not prejudice road safety or significantly inconvenience the flow of traffic….
>
> The acceptability of access arrangements, including the number of access points onto the public road, will be addressed against the Department's publish guidance. Consideration will also be given to the following factors :
>
> - the nature and scale of the development;
> - the character of existing development;
> - the contribution of the proposal to the creation of equality environment, including the potential for urban/village regeneration and environmental improvement;
> - the location and number of existing accesses; and
> - the standard of the existing road network together with the speed and volume of traffic

> using the adjacent public road and any expected increase."

Under the heading "Justification and Amplification" PPS 3 states -

> "5.16 Development Control Advice Note 15 'Vehicular Access Standards' sets out the current standards for site lines, radii, gradient etc. that will be applied to both new access and intensified use of an existing vehicular access on to existing public roads….
>
> 5.17 It is recognised that it may not always be practicable to comply fully with the appropriate visibility standards. Such standards, like all material considerations, need to be assessed in light of the particular circumstances of the individual case. Exceptionally a relaxation in standards may be acceptable in order to secure other important planning objectives. Visibility standards, however, will not be reduced to such a level that danger is likely to be caused."

[9] Development Control Advice Note 15 (2nd Edition of August 1999) on "Vehicular Access Standards" offers "general guidance" on the standards for vehicular access. DCAN 15 states at paragraph 1.3 that the respondent's "normal requirements for vehicular accesses which apply in Northern Ireland are set out in this Advice Note." Further it is stated that "…. in exceptional circumstances a relaxation to the normal access standards may be accepted as indicated in tables A and B in order to secure other important planning objectives. Proposals likely to prejudice road safety will not be approved."

[10] Access to a site from a public road is dealt with in DCAN 15 by reference to the "x distance" and the "y distance". Table A sets out the x distance in metres, being the distance measured along the centre of the access from the edge of the running carriageway of the road. The x distance is fixed by reference to traffic flow and traffic speeds. In respect of an access with traffic flow up to 60 vehicles per day the minimum x distance is stated to be 2.4 m. In respect of an access between 60 and 1000 vpd it is stated that "The minimum x distance is normally 4.5 m. It may be reduced to 2.4 m, but only if traffic speeds on the priority road are below 60 kph (37mph) and danger is unlikely to be caused."

Note 3 to Table A states that "If there is a dispute about the predicted minor road (access) traffic flow, it shall be determined by reference to a recognised

database such as TRICS, or failing that by a direct survey of a similar existing development over an acceptable period."

[11] Table B deals with the y distance, being the distance measured along the near edge of the running carriageway of the road from the centre line of the access. The y distance is fixed by reference to access flow, traffic flow on the road and traffic speeds on the road. With access flow of 60 vehicles per day and traffic flow on the road up to 3000 vpd and traffic speeds of 53 mph the required visibility is 120 metres, reducing to 90 metres in exceptional circumstances. With traffic speeds of 44 mph the required visibility is 90 metres, reducing to 70 metres in exceptional circumstances. Where access flow exceeds 60 vpd the visibility distances at 53 mph are 160 meters, reducing to 120 meters in exceptional circumstances and at 44 mph are 120 meters reducing to 90 meters in exceptional circumstances.

Note 1 to Table B states that "In exceptional circumstances a reduction in the visibility standards may be permitted where, in the judgment of the Department, danger to road users is not likely to be caused. Where exceptional circumstances are considered to exist, it is highly unlikely that the Department will permit visibility standards which fall below the figures in the square brackets."

Note 7 states that "Where actual speed falls between the given values the Y distance may be interpolated."

[12] Initially the respondent required x and y factors of 4.5 metres and 100 metres, in both directions, at the entrance to the club's premises. Finally the respondent required x and y factors of 2.4 metres and 80 metres, in both directions. The variables are the traffic flow at the access, the traffic flow on the road and the traffic speed on the road. An assessment of the visibility splays was undertaken by Rowan Loughlin, a chartered civil engineer with Road Service of the Department of the Environment, whose section deals with approximately 4,000 planning applications per year. On 30 November 2004 he attended the club to examine the traffic situation. He was aware that Road Service had already indicated visibility splays of 4.5 metres by 100 metres and that the applicant's architect had submitted that lesser splays would be sufficient. He assessed traffic speeds on the road at approximately 50 mph. He assessed the access flow at 60 vehicles per day. He assessed traffic flow on the road at up to 3000 vehicles per day. Having taken DCAN15 into account Mr Loughlin concluded that site lines of 2.4 metres by 80 metres would be acceptable. Mr Loughlin concluded that the issue of the appropriateness of visibility splay standards was a matter of judgment, taking into account the objective of ensuring road safety and the prevention of danger to road users and that in accepting the 2.8 metres by 80 metres he was satisfied that the objectives would be secured. Thereafter James Coates of Planning Service received the Road Service response that there was no

objection to the club's amended plans and the Planning Service gave separate consideration to the question of visibility splays and concluded that 2.4 metres by 80 metres was satisfactory.

[13] Douglas Black, a roads engineer engaged by the applicant, contested the access traffic figure at 60 vehicles per day. He referred to the activities carried on at the club, the membership numbers of the sections of the club and the increased capacity of the proposed premises to suggest a higher level of access traffic. He also contested Mr Loughlin's assertion that road traffic was light, as assessed at 3,000 vehicles per day, and referred to traffic and travel information published by Roads Service where the nearest automatic traffic counter site to the location of the club recorded an average daily traffic flow of 4,800 vehicles in 2005. Further he contested Mr Loughlin's road speed of 50mph. Mr Black surveyed traffic speeds in May 2006 and concluded that the speeds were 52 to 53 mph.

[14] Mr Black on behalf of the applicant made his assessment after the planning decision had been made. In relation to Table A Mr Black proceeded on access flow in excess of 60 vpd and contended that the x distance could not be reduced to 2.4 metres as traffic speeds were above 37 mph. In relation Table B Mr Black proceeded on access flow in excess of 60 vpd, road traffic flow in excess of 3000 vpd and road traffic speed in excess of 50 mph and contended that the y distance should be 160 meters and there were no exceptional circumstances that would warrant a reduction below 160 metres.

[15] PPS 3 states that DCAN15 will be applied to intensified use of an existing vehicular access on to existing public roads but that the standards, like all material considerations, need to be assessed in the light of the particular circumstances of the individual case. The overall position is stated in Policy AMP2 to be that planning permission will only be granted for the intensification of the use of an existing access on to a public road where such access will not prejudice public safety or significantly inconvenience the flow of traffic. The access arrangements will be assessed against the published guidance but consideration will also be given to a range of other factors.

[16] The approach to planning policy statements was stated by Carswell LCJ in the Court of Appeal in Gilligans Application [2003] NICA 10 at paragraph 12 as follows -

> "Article 3(1) of the 1991 Order imposes a duty on the Department to "formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development." In performance of that duty the Department has produced a number of planning policy statements, which, if relevant to an application, constitute material

> considerations. Before examining these we should observe that these policy statements are not mandatory requirements which must be construed with the strictness applied to legislation, nor must every single item be adopted and followed like a statutory condition. As we stated in *Re Belfast Chamber of Trade's Application* [2001] NICA 6 at page 3, the Department in making planning decisions is not obliged to adhere to each point of the policy statement and is free to override or depart from any part of it if it considers it justified. That remark is, however, subject to the qualifications that the Department must have regard to any such point if it is relevant to the application and consider it before departing from it, and that the more categorical in expression a requirement in a policy statement may be the more carefully it must weigh the factors which cause it to depart from the statement before it does so. Subject to this obligation, the Department is entitled to attribute such weight as it thinks fit to any consideration, and, as was made clear in Lord Hoffmann's familiar observation in *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 2 All ER 636 at 657, that is a question of planning judgment entirely for the planning authority."

[17] PPS3 and DCAN15 require assessments to be made of access traffic flow and road traffic flow and road traffic speeds. These are not matters which necessarily require scientific measurement and professional assessment may be sufficient. The ultimate standard is that the access should not prejudice road safety or significantly inconvenience the flow of traffic. The published guidance is one of the factors to be taken into account along with other factors relating to the proposed development. An Advice Note is lower than a Policy Statement in the hierarchy of planning documents but on the subject of access standards it is the Policy Statement that applies the standard although the actual tables are contained in the Advice Note. Policy Statements are not only matters to be taken into account but decisions not to follow Policy Statements require careful consideration.

[18] In the present case I am satisfied that Mr Loughlin was qualified to undertake the assessments he did. He assessed the relevant variables at 60 vpd access flow, 3000 vpd road traffic flow and 50 mph road traffic speed. In relation to access flow the applicant contended for a greater number by reference to the use of the premises and criticised Mr Loughlin for a lack of inquiry as to the potential numbers using the proposed premises. In relation to road traffic flow the applicant contended for a greater number and criticised Mr Loghlin for his assessment that traffic was light and for a failure

to refer to available tables or undertake a more scientific inquiry. Similarly in relation to road speeds the applicant contended for a higher speed and criticised Mr Loughlin for a failure to undertake any measurement of traffic speeds. I am satisfied that Mr Loughlin was entitled to make each assessment and that he made adequate inquiry in respect of each and that it was not necessary to undertake scientific testing in the circumstances. Each assessment was a judgment he was reasonably entitled to make.

[19] Some of the assessments made are on the borderline between different outcomes in DCAN15. Thus, for example, access flow at 59vpd produces one outcome and access flow at 60vpd produces another outcome. Yet the tables cannot be applied with a rigidity that demands that compliance with access standards be determined by a difference in assessment of 1vpd. At up to 60vpd access flow, Table A provides that the minimum x distance is normally 2.4 meters, which was the distance required by the respondent. At up to 60vpd access flow and up to 3000vpd road traffic flow and 50 mph road traffic speed, Table B provides that the y distance is between 90 and 120 meters, reducing to between 70 and 90 meters in exceptional circumstances where it is judged that danger to road users is not likely to be caused. Mr Loughlin judged that visibility splays of 2.4 meters and 80 meters in both directions did not compromise road safety. Again that was a judgment that he was qualified to and reasonably entitled to make.

[20] To the extent that access traffic was 60vpd, Mr Loughlin did not adhere to Table A in that the x distance would only be reduced to 2.4 metres where road traffic speeds were below 37 mph, which Mr Loughlin accepted was not the case when he estimated road traffic speeds at 50 mph. It would be an over rigid application of Table A to consider that there had been non compliance with the x distance based on a difference in the assessment of access flow of 1vpd. In any event the guidance applies subject to road safety considerations and Mr Loughlin was entitled to apply Table A in a flexible manner given that the access flow was on the borderline and was also entitled to reach the judgment he did on the road safety issue.

[21] To the extent that access flow was 60vpd, Mr Loughlin did adhere to Table B in that with road traffic up to 3,000 vehicles per day and a road speed of 50 mph the y distance may be between 70 and 90 metres in exceptional circumstances where it is judged that danger to road users was not likely to be caused. Mr Loughlin did consider that there were exceptional circumstances in that danger to road users was not likely to be caused. That was a judgment he was reasonably entitled to make. Mr Loughlin has not identified exceptional circumstances, other than that danger to road users was not likely to be caused, which the applicant contends do not amount to exceptional circumstances in any event. Again, PPS 8 and DCAN15 must not be read as legislation. In addition, with any upward adjustment of any of the variables it could equally be said that Mr Loughlin did not adhere to Table B.

Ultimately Mr Loughlin made a series of judgments in the light of DCAN15 with the objective of ensuring road safety and the prevention of danger to road users. I have not been satisfied that there are judicial review grounds on which any of the judgments that he made can be set aside.

The planning policy issue

[22] Prior to February 2004 the Planning Strategy for Rural Northern Ireland applied Policy REC3 "Indoor Recreation Facilities" to the effect that facilities for indoor, or primarily indoor, recreation would not normally be permitted in the open countryside. In February 2004 policy REC3 was replaced by PPS 8 "Open Space, Sport and Outdoor Recreation". In the course of consideration of the applicant's proposal there were occasions when the respondent referred to policy REC3 rather than PPS 8.

[23] PPS 8 contains two policies which the applicant contended applied to the proposed development while the respondent contended that they did not. Policy OS 3 "Outdoor Recreation in the Countryside" provides that the Department will permit the development of proposals for "outdoor recreational use" in the countryside where stated criteria are met. The applicant questioned whether the respondent had considered if the proposed development constituted "outdoor recreational use" of the purposes of Policy OS 3. Mr Coates of Planning Service agreed that Policy OS 3 was not discussed at the Development Control Groups meetings but stated that it was evident to all concerned that OS 3 did not apply and no one considered otherwise. I accept Mr Maguire's point on behalf of the respondent that the Planning Service could not be expected to engage in discussions of issues that all concerned considered did not arise. The issue is whether the Planning Service left out of account a relevant consideration or whether it was unreasonable to conclude that the proposed development did not involve "outdoor recreational use".

[24] There are existing playing fields for outdoor recreational use at the club premises. The proposed development does not involve any development of the existing playing fields but involves the development of the clubhouse. Of course the development of the clubhouse includes changing facilities and social accommodation for those who might attend the club in order to use the playing fields. To that extent the proposed development affects the existing outdoor recreational use. The respondent concluded that policy OS 3 did not apply to this development. It was an entirely reasonable conclusion for the respondent to reach that the redevelopment of the club premises did not involve a proposal for "outdoor recreational use" in the countryside. A relevant consideration was not left out of account.

[25] However, if the proposal did involve outdoor recreational use in the countryside the criteria to be met include:

> "(v) public safety is not prejudiced and the development is compatible with other countryside uses in terms of the nature, scale, extent and frequency or timing of the recreational activities proposed;
>
> (viii) the road network can safely handle the extra vehicular traffic the proposal will generate and satisfactory arrangements are provided for access, parking, drainage and waste disposal."

[26] The applicant relies on these criteria to the extent that they address matters relating to the roads issue. It is evident from the discussion of the roads issue above that factors concerning public safety, road use and access use have been addressed and the respondent has satisfied itself on these factors in a manner that results in this Court not intervening on judicial review grounds. Accordingly I am satisfied that the argument about OS 3 does not advance the applicant's case beyond the matters discussed under the roads issue.

[27] Policy OS 4 "Intensive Sports Facilities" provides that the Department will only permit the development of "intensive sports facilities" where they are located within settlements. In all cases the development of intensive sports facilities will be required to meet stated criteria. The Planning Service considered whether the proposed development involved "intensive sports facilities" and decided that it did not.

[28] At paragraph 5.37 of PPS 8 it is stated that for the purposes of PPS 8 intensive sports facilities "include stadia, leisure centres, sports halls, swimming pools and other indoor and outdoor sports facilities that provide for a wide range of activities." Whether a development involves "intensive" sports facilities is a matter of fact and degree. Small scale and limited use sports halls will not be included and larger scale multiple use sports halls will be included. The respondent compared the proposal to the position of many church and/or community halls in Northern Ireland which provide for a similar scale of pattern of use to that proposed and it was thought that the proposal could not properly be described as a proposal for an intensive sports facility. The applicant contests that conclusion and refers to the nature of the activities to be carried on at the club and the facilities available to accommodate those activities. It is not considered that there are judicial review grounds for setting aside the conclusion of the respondent that the proposal does not involve intensive sports facilities.

[29] However if the proposal did involve intensive sports facilities the criteria to be met include –

- there is no unacceptable impact on the amenities of people living nearby by reason of the siting, scale, extent, frequency or timing of the sporting activities proposed, including any noise or light pollution likely to be generated.

- the road network can safely handle the extra vehicular traffic the proposal will generate and satisfactory arrangements are provided for site access, car parking, drainage and waste disposal.

[30] The applicant relies on these criteria to the extent that they address matters relating to the roads issue. It is evident from the discussion of the roads issue above that factors concerning the impact of traffic, road safety, road use and access use have been addressed and the respondent has satisfied itself on these factors in a manner that results in this Court not intervening on judicial review grounds. Accordingly I am satisfied that the argument about OS 4 does not advance the applicant's case beyond the matters discussed under the roads issue.

[31] As noted above, in the course of consideration of the applicant's proposal there was an occasion when the respondent referred to policy REC3. The respondent described this reference as a mistake. The Planning Service papers do not refer to OS 3 of PPS 8, as it was said to be evident to all concerned that it did not apply. However the Planning Service papers do refer to OS 4 of PPS 8, although it was decided that it too did not apply. It is apparent that Planning Service were aware of and did take into account PPS 8 as having replaced REC3.

The handling of objections from those who receive neighbour notification.

[32] I return to the matter of the respondent having failed to respond to the applicant's correspondence. Significant issues were raised on behalf of the applicant, as a neighbour of the proposed development, that deserved serious attention. Such serious attention demands that at least there be engagement with the correspondence. There is a striking contrast in the present case between the engagement with the representatives of the Club, as there should have been, and the absence of any response to the applicant, who had responded to neighbour notification, a scheme that has been in operation for over 20 years. In Rowsome's Application [2004] NI 82 certain observations

were made about the engagement of Planning Service with neighbours who had been notified of the application and had lodged objections.

> "[19] As I find in favour of the applicant on the first ground it is not necessary to deal with the issue of procedural fairness. However as there was considerable argument on this ground I make the following observations. The respondent is under a duty to deal with applications for planning permission in accordance with the requirements of procedural fairness. This duty extends to objectors and may require the respondent to provide objectors with an opportunity to make additional representations. In the first instance the Department operates a system of neighbour notification which applied in the present case and resulted in objections being submitted by a number of neighbours. The grounds of objection included the two grounds relied on by the development control group in forming its initial preliminary opinion to refuse planning permission in March 2000. The objectors were not made aware of the revised scheme submitted by the developer in January 2001 or the respondent's revised preliminary opinion to grant planning permission in April 2001 and became aware of the position only after the final decision was made in October 2001.
>
> [20] In R v Monmouth District Council ex parte Jones & Ors [1987] 53 P&CR 108 an application for further development of the site was approved by the planning committee of the Council and was then to come before the full Council. An objector re-examined the plans and found they had been amended and were inaccurate and the matter was referred back to the planning committee. However the planning committee endorsed its previous decision without hearing any representations from the objectors. Woolf J granted the application for judicial review on the basis that the requirements of fairness in the circumstances required that the objectors be allowed to make representations on the amended plans and that such representations might have affected the outcome of the application for planning permission.
>
> [21] The respondent submitted that it was not necessary, further to any of the amendments made to the developer's application, to re-advertise the application or to issue further notices to the objectors, because there had been no substantial change to the proposed development. I accept that the amendments did not effect a substantial change in the proposed development. The amendment of preliminary opinions was described as commonplace. I accept that such amendment would not of itself require notice to the objectors. In the present case there

was a lengthy period of consultation between the respondent and the developer in relation to the objections to the development, as the developer attempted to overcome the objections. During that time the objectors had no notice of the evolution of the application.

[22] Objectors are in a position to keep themselves aware of the progress of applications as they are entitled to consult the planning service and to consider the plans, but fairness requires that there be reasonable limits on the extent to which the onus remains on the objector to discover the current state of the application. By August 2000 the developer's amendments had been rejected. Then the process effectively began another cycle. In January 2001 the revised schemes were submitted and the application came back to the development control group for reconsideration in April 2001, over one year after initial consideration, at which stage the preliminary opinion was altered to one of approval of the amended proposal. Had the revised scheme involved what the respondent regarded as substantial changes to the proposal then notice would have been given to the applicant. I consider that fairness would require notice to objectors not only where there had been a substantial change to the application but also where there had been any other significant change of circumstances that might affect the outcome of the application.

[23] When a matter goes to the Council and is deferred for consideration at a meeting, it will be apparent to objectors that amendment of the proposal is in prospect and amendment of the preliminary opinion may follow. But when that amendment takes place and is rejected by the respondent, and after a lapse of time the developer then submits a revised scheme that the respondent considers may affect the preliminary opinion, in my opinion there has been a significant change of circumstances. When that happens, fairness requires that the objectors have notice of the proposed reconsideration, or at least of the amended preliminary opinion, so that they may be placed in a position to make representations on the revised scheme.

[24] It might be suggested that it would be difficult for the respondent to know that there had been such a degree of change of circumstances as could be said to be significant. To that suggestion I would say that the respondent presently determines whether the degree of change of the development proposals could be said to be substantial and apparently is able to do so without particular difficulty. Each case will, of course depend on its own particular facts but there is no reason to anticipate undue difficulty in

identifying those cases where rejected amendments have resulted in a delayed relaunch of the proposal leading to active consideration being given to amendment of the respondent's position.

[25] As to whether any representations might have had any effect in the circumstances of the present case, I am satisfied that the objectors would have relied on the proper nature of the character objection and the respondent would have taken into account the full extent of that material consideration. It is at least distinctly possible that representations by objectors would have made a difference to the outcome of the application."

[33] The facts and circumstances of Rowsome's Application are of course not identical to the present case. However the general theme finds an echo in the present case. As leave was granted in the present case to deal only with the roads issue and the planning policy issue, it is not intended to make further comment on the issue of engagement with neighbours who are objectors.

[34] I have not been satisfied on any of the applicant's grounds for judicial review. The application for judicial review is dismissed.