Neutral Citation Number: [2019] EWHC 746 (Admin)

Case No: CO/1697/2018

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**ADMINISTRATIVE COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/03/2019

**Before** :

**MR JUSTICE DOVE**

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**Between :**

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| **PATRICIA THOMPSON (on behalf of herself and members of the Passionate about Llanddulas)** | **Claimant** |
| **- and -** | |
| **CONWY COUNTY BOROUGH COUNCIL** | **Defendant** |
| **- and-** | |
| **CARTREFI CONWY CYFYNGEDIG** | **Interested Party** |

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**Rachel Watkin** (instructed on a direct access basis) for the **Claimant**
**Martin Carter** (instructed by **Janet Hughes**) on the legal department of Conwy County Borough Council for the **Defendant**
**Paul Tucker QC and Philip Robson** (instructed by **Anthony Collins Solicitors LLP**) for the **Interested Party**
Hearing dates: 4th February 2019

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# Approved Judgment

**Judgment Approved by the court for handing down.**

**Mr Justice Dove:**

The facts

1. The site in question in relation to these proceedings is the Fair View Inn in Llanddulas. It appears that Evelyn Waugh was at one time a patron of the Fair View Inn when he taught at a nearby preparatory school. The Fair View Inn features as "Mrs Robert's Pub" both in his diaries and also in his first novel, *Decline and Fall*. Having being established since 1861, the Fair View Inn closed to trade in recent times and was purchased by the Interested Party on the 19th September 2017. On the 28th November 2017 they submitted a planning application in respect of the Fair View Inn site which described the proposed development as follows:

> "Demolition of single storey extensions to and the remodelling and refurbishment of the Fair View Inn into a six-person four-bedroom house. The construction of 24 new build one and two-bedroom apartments over 3 and 2.5 storeys with associated car parking and ancillary facilities."

2. This application was the subject of representations and objections. It was reported to the Defendant's planning committee for decision on the 14th February 2018. In order to assist the members of the Planning Committee in reaching a decision on the application a committee report was prepared.

3. The officer who had responsibility for preparing the report (who was the case officer dealing with the planning application) Ms Katy Roberts, sought advice from the Education Department of the Defendant in relation to their consultation response. The Education Department indicated that they sought a financial contribution of £17,009. She requested this information on the 24th January 2018 and after a number of emails were exchanged the following consultation response was provided by Mr Wyn Jones, the relevant officer within the Defendant dealing with education provision:

> "The application is for one four bedroom dwelling as well as 15 two bedroom and 9 one bedroom flats. It would be expected that this combination of housing would add approximately 2 nursery and primary pupils to the local school population.
>
> Conwy County Borough Council is the Admission Authority for Ysgol Llanddulas.
>
> Ysgol Llanddulas has a capacity of 131 (not including nursery) and on 23rd January, 2017 had a school population of 141. The admission number for the school (the number of pupils that are permitted to be admitted in a year group) is 18. Even though the additional numbers are likely to be low, as the school is already oversubscribed by 10, any additional numbers would add to pressure on the school. The current year group totals are as follows:
>
> Nursery - 19

> Reception – 15
>
> Year 1 – 19
>
> Year 2 – 19
>
> Year 3 – 25
>
> Year 4 – 23
>
> Year 5 – 11
>
> Year 6 – 11
>
> It can be seen that the admission number is exceeded in many of these year groups. Admitting any additional children in any of these year groups would be in breach of the Statutory School Admissions Code for Wales that states:
>
> "Admission authorities must have regard to the 'indicated admission number' for each year group." And "The admission number reflects the school's ability to accommodate pupils and it should not be exceeded."
>
> If pupils were to be refused admission to this school, there would be additional transport costs that would need to be met by the Authority. Also, pupils may not be receiving their education in their own locality.
>
> It is recognised that a S106 sum would be payable if this application is approved. However, the calculated sum would not be sufficient to make any suitable material changes to the existing school buildings to increase its capacity to accommodate any additional pupils."

4. Following the receipt of this reply Ms Roberts queried with Mr Jones as to whether or not the Education Department would be content with the contribution being put towards the transport of pupils to other schools. Mr Jones clarified that as pupil transport arrangements are a revenue item the section 106 contribution could not be deployed for that purpose. In the light of that response Ms Roberts then queried whether there was any purpose in seeking the contribution. Mr Jones' response in the afternoon of the 25th January 2018 was in the following terms:

> "Yes, we will be building a new school there in less than 5 years and the money will come in handy!"

5. When compiling the committee report Ms Roberts included the following text in relation to the consultation response from Education Services:

> "Education Services: The development is expected to add approximately two nursery and primary pupils to the local school population. The admission number is already exceeded

> in many of the year groups and admitting any additional children would be in breach of the Statutory School Admissions Code for Wales. If pupils were to be refused admission to this school, pupils may not receive education in their own locality and there would be additional transport costs that would need to be met by the authority. The calculated S106 sum is not sufficient to make any changes to existing school buildings to increase its capacity to accommodate any additional pupils."

6. One of the issues raised by objectors was the question of the loss of the Fair View Inn as a community facility. The question of loss of community facilities in certain settlements such as Llanddulas is the subject matter of policy CFS/6 of the Conwy Local Development Plan 2007-2022. The wording of that policy together with its explanatory text provides as follows:

> "Policy CFS/6 – Safeguarding of community facilities outside the sub-regional centre and the town centres
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> Where no similar facilities exist outside Llandudno, Colwyn Bay, Abergele, Conwy, Llandudno Junction, Llanfairfechan, Llanrwst and Penmaenmawr development which would lead to the loss of the following community facilities will only be permitted where it has been clearly demonstrated that the building is no longer viable for its existing use and that there is no continuing community need for those facilities:
>
> a) Shops selling convenience goods
>
> b) Post Offices
>
> c) Petrol Stations
>
> d) Village/ church halls
>
> e) Public houses
>
> 4.5.7.1 District, local, village and rural facilities such as those mentioned in Policy CFS/6 play a vital role in sustaining smaller centres and reducing the need for residents to travel to meet everyday needs. In smaller villages they also play an important community function, supporting those who have difficulty travelling further afield and forming a hub to village life.
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> 4.5.7.2 The Council will encourage the retention of such community facilities as advocated in TAN6- 'Planning for Sustainable Rural Communities' para 5.1.3 where they provide an essential service to the locality and are economically viable. When considering proposals which involve the loss of such facilities, the Council will consider the impact of the loss on the

> local community, in terms of the availability, access to alternatives and social implications, including the impact on the viability of the village as a whole. Where such proposals are received, the applicant will need to demonstrate that the current use is no longer viable by supplying relevant financial information to support the case, plus evidence of the premises being marketed for a minimum of 6 months at a realistic price. A supporting statement should be submitted with the application which explains the extent of the marketing exercise and includes the agent's view as to the commercial viability of the site. Applicants are encouraged to read the relevant sections contained within LDP7- 'Rural Conversions' SPG for further detailed guidance on undertaking satisfactory marketing exercises and producing supporting statements."

7. The committee report addressed the question of loss of community facility in the following terms:

> "Loss of community facility
>
> 29. Policy CFS/6 states that where no similar facilities exist outside the sub-regional and town centres, development leading to the loss of community facilities (including public houses) will only be permitted where it has been clearly demonstrated that the building is no longer viable for its existing use and that there is no continuing community need for the facilities.
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> 30. There is currently one other public house within Llanddulas (The Valentine) and therefore Policy CFS/6 does not apply."

8. Having considered a range of other matters, including the need for housing and the provision of affordable dwellings, the recommendation from the officers in the committee report was that planning permission should be granted, subject to the imposition of conditions and the satisfactory resolution of highway and waste matters and the completion of a legal agreement to deliver the various commuted sums referred to in the committee report including the commuted sum in relation to education.

9. Within the papers there is a transcript of the debate at the planning committee meeting. It was accepted by Mr Martin Carter who appeared on behalf of the Defendant that the transcript was accurate. It records Ms Roberts taking the members of the Committee through an addendum to the report. She also rehearsed within her presentation to the members the objections that had been raised in relation to the loss of the Fair View Inn as a local facility. She explained that there had been a rebuttal provided by the Interested Party. In respect of Policy CFS/6 the Interested Party had contended that it "doesn't apply as there is another public house within the village".

10. During the course of the debate the Defendant's Building and Development Manager, Ms Paula Jones (having advised that there was a balancing exercise to be undertaken

in relation to housing land supply and the provision of affordable housing as against matters such as educational needs) responded to the debate in respect of policy CFS/6 and objections that had been raised and supported by members on the basis that the quality and extent of the facilities at the Fair View Inn were not reflected in the only public house which would be left in the village, The Valentine. The transcript records the following exchange between Ms Jones and members of the committee:

> "Paula Jones: In terms of the concerns about the loss of community facilities, just bear with me I'm trying to pull up the right policy, I think its CFS6- does mention safeguarding community facilities, and the policy says where no similar facilities exist outside Llandudno, Colwyn Bay, Abergele, Conwy, Llandudno Junction, Llanfairfechan, Llanrwst and Penmaenmawr, development which would lead to the loss of the following community facilities will only be permitted where it has been clearly demonstrated that the building is no longer viable for its existing use, and that there is no continuing community need for those facilities. On that list-shops selling convenience goods, post offices, petrol stations, village church halls and public houses. The policy then in the supplementary text discusses the loss and it does mention, if I can find it, "when considering proposals which involve a loss of such facilities, the council will consider the impact of the loss on the community in terms of availability, access to alternatives, and social implications". I note your concerns, but we are of the view that given there is another public house in the vicinity, then that isn't significant.
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> Nigel Smith: Just on that note Paula, I don't know if you've been into the other pub, but it is extremely tiny, and in fact a good friend of mine, the former councillor Chris McCrae, can't event stand upright in it.
>
> Paula Jones: I appreciate that but the policy doesn't differentiate.
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> Keith Eeles: it indicates that they are very different premises.
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> Nigel Smith: The Fairview has a function room where you could go have a meal with your children. You can't do that in the other pub so they're two different venues really."

11. Just prior to this discussion Ms Roberts provided further information in relation to education provision and the use of the commuted sum in the following terms:

> "Katy Roberts: Education has confirmed that the local school is at capacity at the moment, so obviously this development, it would be difficult for this development to be accommodated by the existing school. However, a commuted sum has been requested and our education section has confirmed that the commuted sum would be used to improve the site in the near

> future. Whilst they haven't gone into much detail, they have stated that the improvements do actually include the construction of a new school, which would be able to accommodate the new development."

12. Ultimately, the officer's recommendation for approval was adopted by the members of the Committee by four votes to three. Subsequently, on the 16th March 2018, the notice granting planning permission to the interested party was issued. These proceedings were commenced on the 27th April 2018. The application was presented on the basis of 16 grounds. On the 16th August 2018, HHJ Pelling QC sitting as a Deputy Judge of the High Court granted permission to apply for judicial review upon two grounds. The first ground related to the interpretation policy CSF/6. The second ground related to the advice which had been received in respect of education provision.

13. Subsequent to the issuing of these proceedings on the 13th September 2018, Ms Roberts contacted Mr Jones again and sought further clarification as to why the education contribution had been sought and whether it was reasonable in scale and kind in relation to the application. Mr Jones responded to her in the following terms:

> "The sum suggested for the S106 contribution is £17,000. This amount could not be used to build additional capacity in a school that is heavily over-subscribed. School building costs are approximately £2,750 per m2. The proposed sum would therefore mean we could build an additional 6m2 area. This is obviously not practical. The money could not be used for transport purposes as transport is a revenue commitment over several years and the sum would only be available for 5 years. The money would be useful if a new school were to be built as it would contribute a small sum towards the overall costs of the new school building."

14. It appears that around the same time, the Claimants successfully sought disclosure (through a Freedom of Information application) of emails which had been exchanged at around the time of the drafting of the Committee report, including the emails which have been quoted above in relation to Ysgol Llanddulas. The local member for the Llanddulas ward, Councillor Eeles, queried with Mr Jones when the new school would be built and what had been undertaken by way of work to support the provision of a new school. Mr Jones responded to Councillor Eeles in the following terms:

> "What I can tell you is that following Cabinet's August meeting in which a reviewed Strategic outline Programme was agreed, Llanddulas is still on the list of sites to be reviewed with a view to alleviating the problems in the school and providing the best possible "21st Century School" facilities for the learners of the area.
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> What this means is that the review will be undertaken of what is currently provided. This will be compared with the expectations of a "21st Century School" as well as the needs and wants of the staff, pupils, parents and local population in a

series engagement events. Based on all the findings, a proposal will be made that fits in with the needs of the area. As I see it now, I believe that the likely outcome is a proposal for a new build school building to be built on the school field whilst the school continues to operate in the current building and that the school would transfer when the new building is ready. HOWEVER, this outcome will only come about if the examination of all the evidence points to this. As part of the engagement and examination of evidence, other proposals may be found to be more favourable.

The timing of all this is more difficult for me to predict. Our intention at the moment is to wrap all our new build projects into a package for delivery via a financing method called the Mutual Investment Model. This is a Welsh Government model of finance whereby we as an authority would pay a provider to build the schools and then to be responsible for their external upkeep for the next 25 years with us paying a 'rent' payment. This would beneficial to the authority as the Wels Government would pay 75% of the costs throughout the 25 year period. Tied in with this funding method is a proposal by the Welsh Government to establish a Strategic Delivery Partner to work with authorities to deliver the projects. In our case, the Service Delivery Partner would be one that would cover the whole of North and West Wales. As the Welsh Government aren't planning to have the Strategic Delivery Partner in place until early 2020, the actual work of constructing any solution for the Llanddulas area is not likely to start until sometime in 2020 at the earliest. We will not be in control of the phasing of projects as this will be one of the responsibilities of the Strategic Delivery Partner.

As for funding, The Welsh Government have approved the Authority's £43.1m Strategic Outline Programme and as I said, Llanddulas is part of the programme. However, each project will be subject to individual business cases that will bring all the evidence together to produce a document that outlines in detail why the selected option is the right option for a particular area and justified the Welsh Government's investment in the project. I believe that at this stage, without the benefit of stakeholder input, there is a strong case for a new school in Llanddulas. However, the final decision will lie with the Welsh Government. If it's any reassurance, I have been successful with every Business Case I have submitted to the Welsh Government.

One of the lessons we learnt from the Band A programme in Conwy was that engagement too soon in the process raised expectation too early and led to some difficulties with changing expectations as the cohort of learners, parents and governors

> changed over time. As such, we will not be commencing engagement in the Llanddulas area at least until the second half of 2019."

The Grounds

15. As set out above the claim proceeds on two grounds. The first ground is that the Defendant failed to properly interpret policy CFS/6 of the Local Development Plan. The Claimant submits that where that policy refers to "similar facilities", which is the trigger under the policy for requiring a viability assessment and the satisfaction that there is no continuing community needs for the facility, the policy requires a qualitative assessment of the facility which is being lost to the settlement and any facility of a like nature which would remain in the settlement. Applying what is submitted to be the correct interpretation of the policy to the present case, it was necessary for the Defendant to give active consideration to the question of whether or not The Valentine was able to offer a similar facility to the Fair View Inn, and where, as the Claimant contends, there would be significant adverse qualitative differences in relation to the facilities on offer at The Valentine in terms of space of the public rooms, the facilities for children, disability access and car parking, then the policy required a viability study and an assessment of community need. Bearing in mind what is contended are the differences between the Fair View Inn and The Valentine in terms of these premises' configuration and their offer, the policy required the Defendant to insist that the Interested Party undertake a viability exercise and an assessment in community need which they failed to do.

16. By contrast the Defendant and the Interested Party submit, in brief, that the reference to similar facilities is, on a proper interpretation of the policy, simply a reference to the list of facilities set out at (a) to (e). Provided that one of those types of facility would still remain in the settlement after the closure of another of the same type, the policy does not require provision of a viability exercise nor consideration of continuing community need for the facility. This interpretation of the policy was the basis for the advice to the Committee provided both in the Committee report and also by Ms Jones in her oral presentation to the Committee.

17. In the event of the court concluding that the Claimant's interpretation of the policy was correct a significant volume of evidence has been provided by the Defendant, the Interested Party and the Claimant as to whether or not there will be a qualitative deficit in the community facilities available in Llanddulas after the redevelopment of the Fair View Inn. This evidence examines the offer at The Valentine public house, the village hall and the Royal British Legion club. The evidence has been put before the court to support the submission made by the Defendant and the Interested Party that even if there was an error of law in the interpretation of the policy, as a matter of discretion the court should not quash the decision applying the test set out in section 31(2A) of the Senior Courts Act 1981. I afforded the parties the opportunity to make submissions about this evidence without, where it was in breach of directions, making any explicit orders as to its admissibility. I did so for the sake of completeness. The approach which I propose to take in the course of this judgment is to consider whether or not the Claimant's case under ground 1 is made out, and if so to give consideration to that material and its admissibility, if appropriate. Obviously if the view is formed that the Claimant's case under ground 1 has not been made out then there will be no

need to consider whether or not discretion needs to be exercised in respect of this ground.

18. Ground 2 is the contention that the Committee were misled by inaccurate information being provided in relation to education provision and additional school capacity. It is submitted that although members were advised that the commuted sum would be used to improve existing school facilities in the near future, including the construction of a new school, the position as explained in the correspondence set out above is significantly different. Ms Rachel Watkin, who appears on behalf of the Claimant, contends that the position in truth is that the school in Llanddulas will remain over capacity on the basis that there is no guarantee at present that any new school would be secured through the provision of a commuted sum for education. The Committee were therefore misled and the decision which was reached was unlawful.

19. On behalf of the Defendant and the Interested Party it is submitted that, firstly, the *ex-post facto* evidence which is being relied upon should be disregarded. Secondly, it is submitted that what Ms Roberts told members both through the Committee report and also orally, accurately reflected the advice that she had received from Mr Jones. Even if the *ex-post facto* information is taken into account there was still no basis for members to conclude that a relatively modest education contribution would be instrumental in securing a new school on the site. Furthermore, it would have been obvious to them that further statutory and administrative procedures would need to be gone through before a further school could be commissioned. In the circumstances, therefore, the members were not in any way misled.

The Law

20. The discretion as to whether or not to grant planning permission is governed by a number of statutory provisions. Firstly, sections 70(1) and (2) of the Town and Country Planning Act 1990 require regard to be had to the development plan as far as material to the application in considering whether or not planning permission should be granted. Further, section 38(6) of the Planning and Compulsory Purchase Act 2004 requires as follows:

> "38(6) if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Act the determination must be made in accordance with the plan unless material considerations indicate otherwise"

21. Given the centrality of the development plan it is important to bear in mind that following the case of Tesco Stores Limited v Dundee City Council [2012] UKSC 13 the proper interpretation of planning policy is a matter of law for the court (as opposed to its application, which is for the decision-taker, alongside the attribution of weight to the various elements of the development plan).

22. In Canterbury City Council v SSCLG and Gladman Developments Limited [2018] EWHC 1611 (Admin) I expressed the following views in the light of the decision of the Supreme Court in Tesco Stores and Hopkins Homes Limited v Secretary of State for Communities and Local Governments [2017] 1 WLR 1865:

> "In my view in the light of the authorities the following principles emerge as to how questions of interpretation of planning policy of the kind which arise in this case are to be resolved:
>
> i) The question of the interpretation of the planning policy is a question of law for the court, and it is solely a question of interpretation of the terms of the policy. Questions of the value or weight which is to be attached to that policy for instance in resolving the question of whether or not development is in accordance with the Development Plan for the purposes of section 38(6) of the 2004 Act are matters of judgment for the decision-maker.
>
> ii) The task of interpretation of the meaning of the planning policy should not be undertaken as if the planning policy were a statute or a contract. The approach has to recognise that planning policies will contain broad statements of policy which may, superficially, conflict and require to be balanced in ultimately reaching a decision (see Tesco Stores at paragraph 19 and Hopkins Homes at paragraph 25). Planning policies are designed to shape practical decision-taking, and should be interpreted with that practical purpose clearly in mind. It should also be taken into account in that connection that they have to be applied and understood by planning professionals and the public for whose benefit they exist, and that they are primarily addressed to that audience.
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> iii) For the purposes of interpreting the meaning of the policy it is necessary for the policy to be read in context: (see Tesco Stores at paragraphs 18 and 21). The context of the policy will include its subject matter and also the planning objectives which it seeks to achieve and serve. The context will also be comprised by the wider policy framework within which the policy sits and to which it relates. This framework will include, for instance, the overarching strategy within which the policy sits.
>
> iv) As set out above, policies will very often call for the exercise of judgment in considering how they apply in the particular factual circumstances of the decision to be taken (see Tesco Stores at paragraphs 19 and 21). It is vital importance to distinguish between the interpretation of policy (which requires judicial analysis of the meaning of the words comprised in the policy) and the application of the policy which requires an exercise of judgment within the factual context of the decision by the decision-taker (see Hopkins Homes at paragraph 26)."

23. These are the principles which need to be applied in resolving the question of whether or not, under Ground 1, the Defendant has misinterpreted policy CFS/6 of the Local Development Plan.

24. I turn to consider the legal principles governing an allegation that members have been misled by the advice which they have received from their officers. The following principles emerge from the case law as summarised by Hickinbottom J (as he then was in R (Zurich Assurance Limited trading as Thread Needle Property Investments) v North Lincolnshire [2012] EWHC 3708) at paragraphs 15 and 16, and the decision of Holgate J in Luton Borough Council v Central Bedfordshire Council and Houghton Regis Development Consortium [2014] EWHC 4325 (Admin) at paragraphs 90-95. Firstly, the case-law has made clear that it is a reasonable inference where members follow the recommendation of their officers that they can be taken to have adopted the reasoning and explanation provided in the Committee report and any other presentation to them by officers. When approaching the examination of the Committee report the courts have made clear that criticisms will not merit consideration unless the overall effect of the report has been to significantly mislead the Committee about the material considerations bearing on their decision. Reports should also be approached on the basis that they are being read by a knowledgeable readership in the form of a Planning Committee of trained council members, with a substantial local background knowledge of the area which they represent and a broad familiarity with local development plan policies. Thus officer reports should be read as a whole and in a common sense manner, bearing in mind they are addressed to an informed readership rather than construed as a statute or other similar legal instrument, and that they were intended to be a practical decision-taking tool.

25. It is again, against the background of these principles that the material provided by the officers in the form of the Committee report, and the oral presentation to members evident by the transcript, calls to be considered in order to test whether or not the members were misled.

Conclusions

26. Having considered Ms Watkin's careful and measured submissions, I am unpersuaded that the Defendant was guilty of misinterpreting policy CSF/6. In my view it is clear that the phrase "no similar facilities" relates to facilities of a similar type to those listed in (a) to (e) in the text of the policy, rather than facilities of that type and of a similar quality to the facility which is to be lost.

27. Applying the correct approach, the interpretation of the meaning of the policy should not be approached as if the policy were statute or a contract. It should, however, be interpreted consistent with what can be discerned to be the purpose of the policy. In my view it is of some significance that paragraph 4.5.7.1 of the explanatory text identifies that facilities such as those mentioned in the policy play a vital role in sustaining smaller centres and reducing the need to travel. In my view, therefore, it is reasonable to interpret the list of facilities from (a) to (e) as individual facilities which enable a community to meet its day-to-day needs without travelling further afield. There is no suggestion that the policy supports the provision of a diverse range of, for instance, convenience goods shops. The purpose of the policy, in my view, is to be read as requiring the retention of a shop selling convenience goods and to require detailed scrutiny to be given to a proposal which would lead to a community being left without a convenience goods shop. It is not a policy supporting, for instance, the need to retain a range of convenience goods shops within any particular community. The same reasoning applies more forcefully in relation to, for instance, post offices and village and church halls. The purpose of the policy is to prevent a community

being left with no village or church hall at all, not to preclude the loss of one such facility when there are others available to the community enabling it to be able to host community activities and functions without having to travel further afield to do so. Thus, on balance, when considering the purpose of the policy in planning terms, it appears clear to me that the interpretation placed on the policy by the Defendant and the Interested Party is correct.

28. The second consideration from the principles of interpretation which is of assistance in this case is the need to approach the policy as an aid to practical decision-taking. If the policy were to be interpreted as the Claimant suggests, and as a requiring a detailed qualitative assessment on the occasion when one of a number of facilities of a community of a type listed at (a) to (e) is lost to redevelopment, then there would be significant consequences for practical decision-taking. Firstly, the explanatory text offers no guidance whatsoever as to how any such comparison between, for instance, the convenience goods shop to be redeveloped and other pre-existing shop or shops in the community is to be undertaken. As Mr Carter pointed out in the course of his submissions, the objectors to the application presented various approaches to the comparative qualitative assessment in relation to public houses in Llanddulas which they thought should be applied pursuant to their and the Claimant's interpretation of the policy. In representations which were provided in writing to the planning committee it was suggested as follows:

> "Please consider- not whether there is another public house BUT whether there is a similar facility in Llanddulas. Is there another pub-restaurant in the village with parking? One suitable for families? One with seating away from the bar for children? One large enough for funeral wakes, fundraising events, parties and other functions with parking to support those functions? If the answer is "no" to any of those points then there is no similar facility in Llanddulas and the policy applies with the result that the application should be rejected. Please read it."

29. In the Claimant's grounds the following submission was made in support of Ground 1 and again being a basis for a comparative analysis. The submission was as follows:

> "Therefore, if there were two adult drinking public houses, the policy would not apply but where one of the public houses is an adult drinking facility and the other is a family friendly pub/ restaurant the policy applies."

30. In the Claimant's reply to the Defendant's Summary Grounds for Resisting the Claim a further potential basis for undertaking a comparative analysis pursuant to the policy is set out by the Claimant in the following terms:

> "In response to paragraph 16, it is averred that "similar facility" can relate to trade activities but also the physical nature of the premises, including size, garden with play area, parking, location. In all respects, the Fair View Inn is not similar to the Valentine. In any event, comparison of trading characteristics is not subjective. The nature of trading is a matter of fact."

31. In addition to each of these potential alternative ways of undertaking some kind of comparative qualitative exercise it should also be noted that, of course, the planning system plays no part in guaranteeing a certain trading style within a public house. A public house in Wales is a class A3 use and provided the way in which the premises are operated falls generally within that use class, there is no means of the planning system enforcing the particular way in which the public house might trade or the type of clientele it serves. For example, the planning system could not prevent the change of trading style from an operation which was family-friendly to one which was focused exclusively on adult drinkers. It could not prevent a public house from withdrawing its food offer altogether and becoming a wet-led business. Both the multiplicity of different ways of undertaking the kind of comparative exercise which the Claimant advocates, coupled with the fact that many of the points of comparison they identify are beyond the control of the planning system, all suggest that the interpretation that they advocate would not be conducive to practical decision-taking. By contrast, the interpretation advanced by the Defendant and the Interested Party, which fits far more closely with the perceived purpose of the policy, is one which is clear and certain in its application. Where, for instance, the last facility in a relevant settlement of a type identified at (a) to (e) (for instance, the last convenience goods shop) is proposed to be lost to redevelopment then the policy is engaged, and requires the consideration of the matters set out in relation to viability and continuing community need, including the consideration required by paragraph 4.5.7.2 of the explanatory text.

32. It follows from my conclusion as to the correct interpretation of the policy that I am not satisfied that in this instance the Committee were misled by the Committee's report or the advice they were given by Ms Jones. The Committee's report was entitled to suggest that policy CFS/6 did not apply, or was not engaged, in circumstances where there was another public house in Llanddulas. As Ms Jones observed, the policy does not differentiate between separate community facilities of the type identified in the sub paragraphs in the way contended for by the Claimant. I am therefore satisfied that the Claimant's argument on Ground 1 cannot succeed as a matter of substance, and it follows that there is, in my view, therefore no need to give consideration to the matter arising in respect of the exercise of discretion.

33. I turn to the issues arising under Ground 2. In my view there is force in the submission made by Mr Carter on behalf of the Defendant that the question of whether or not officers misled members should be considered on the basis of the material as known to the officers at the time of the Committee report, rather than taking account of matters that arose or came to light after the decision was reached. It appears to me from the material available that what Ms Roberts advised members, both in the Committee report and orally during the course of the debate, accurately reflected the information that she had been given. The commuted sum, which was requested of the Interested Party, was to be used, as Ms Jones advised, within the next five years in order to build a new school. Mr Jones' email on the 25th January was, in reality, a short-hand version of the information which he subsequently provided to Councillor Eeles on the 18th September 2018. As Ms Roberts advised the Committee, the education section had "not gone into much detail" but they had stated that the improvement included the construction of the new school. No one had any reason to suppose that the construction of the new school would not be undertaken with the pupil yield from the proposed development taken into account.

34. Whilst Ms Watkin submits, reliant on the evidence provided some months after the decision, that the answer provided to Councillor Eeles in relation to the provision of the school is far more hedged around with further administrative and legal steps which it will be necessary for the authority to go to before a new school should be secured, Mr Jones does provide the reassurance that he has been successful with every business case that he has submitted to the Welsh Government hitherto. Whilst, no doubt, there is no room for complacency, what Mr Jones is stating in the email of the 18th September 2018 is not in substance different from the succinct email he sent to Ms Roberts earlier in the year, namely that the Education Section of the Defendant has it in mind to use the commuted sum towards the redevelopment of the school in Llanddulas within five years. In my view it would subject the advice that the members were given to an illegitimate and overly forensic scrutiny to suggest that it was necessary also to spell out the further statutory and administrative processes which would be required before the new school would be open for use. The issue about which members were being advised was the question of whether or not there was a legitimate objective for the commuted sum in respect of education. The advice which the members were provided with accurately reflected the view of the Education Section given by Mr Jones and did not in my judgment mislead them. I am therefore satisfied on the basis of the information which has become available since the grant of permission that the members were not misled. Thus, even were account taken of material provided after the decision the position remains the same.

35. It follows that I am satisfied that Ground 2 of the Claimant's case must also fail, and therefore that the Claimant's case must be dismissed.

36. A matter was raised in written submissions before me in relation to the appropriate cost cap under the Aarhus Convention Costs Rules. In effect an application to vary the costs cap was made by the Claimant bearing in mind that as a result of fundraising some £792.03 had been raised to support the case. Subject to any further submissions which the parties may wish to make, I am satisfied on the basis of the witness evidence available to me that the cost cap of £5000 which ordinarily applies would be unaffordable to the Claimant who has explained in unchallenged detail her particular personal financial circumstances. I am therefore of the preliminary view that her costs liability in the light of these facts should be capped in the sum of £792.03. I am prepared to receive, if so advised, any further submissions in writing as to the final form of the costs order in this case.