

Case Name: *Morris Homes Ltd, R (on the application of) v Secretary of State for Housing, Communities and Local Government [2025] EWHC 3236 (Admin) (17 December 2025)*

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Commentary:

Morris Homes Limited ("**the Claimant**") sought judicial review of the Secretary of State for Housing, Communities and Local Government's ("**the Defendant**") Planning Inspector decision dated 8 January 2025 dismissing the Claimant's appeal made pursuant to section 106B of the Town and Country Planning Act 1990 ("**the Act**") against Peterborough City Council's ("**the Council**") refusal to modify a planning obligation dated 25 October 2013 ("**the Obligation**") on the basis that it no longer served a useful purpose.

The Claimant raised two grounds of challenge: firstly, that the Inspector wrongly interpreted the planning obligation ("**Ground 1**") and, secondly, that the Inspector failed to give adequate reasons for their decision ("**Ground 2**").

Dan Kolinsky KC (sitting as a Deputy Judge of the High Court) ("**the Deputy Judge**") dismissed the judicial review claim.

The planning obligation in question was a contribution to carbon reduction measures ("**Allowable Solutions Contribution**") which was to be spent by the Council in agreement from a Project Board which was to include Zero Carbon Hub Limited ("**ZCH**"). However ZCH no longer existed and the question was whether ZCH's presence on the Project Board was essential or non-essential to the mechanism for disbursing ASC under the s106 agreement. The Inspector's decision that the role of ZCH on the Project Board was not essential and the judge held that this was decision was legally open to her to make and that she did not therefore err in concluding that the obligation continued to serve a useful purpose and Ground 1 was dismissed.

Although there was no express statutory duty to give reasons imposed on an Inspector in a decision made on a s.106B appeal, the parties agreed that there was a duty to give reasons following the Supreme Court observations in *R (CPRE Kent) v Dover District Council* [2018] 1 WLR 108. The standard of the reasons required is that they must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the principal important controversial issues. The reasons were held to be adequate and therefore ground 2 was also rejected.

The Obligation

The key part of the Obligation is contained in Schedule 3.

Part 1 of Schedule 3 provides definitions, which include the following:

- i. *"Allowable Solutions Contribution" "means the contributions to be calculated as per the formula in Part 2 below to be spent by the Council with agreement from the Project Board and in accordance with the provision and principles set out in the Zero Carbon Hub Allowable Solutions Report which shall be interpreted to include energy efficiency improvements, on-site energy generation and district heating to either existing dwellings or Communal Buildings" ("ASC").*
- ii. *"Communal Building" "means a building used by the community if Peterborough, including but not limited to schools, swimming pools and leisure centres, libraries, village halls, and council buildings (including offices) that are accessible to the public".*
- iii. *"Project Board" "means the project board comprising representatives of the Council, Morris Homes and Zero Carbon Hub Limited (Company No. 06677029) which shall be set up upon receipt of the first Allowable Solution Contribution Payment".*
- iv. *"Zero Carbon Hub Allowable Solutions Report" "means the 'Allowable Solutions for Tomorrows New Homes: Towards a Workable Framework' report dated July 2011 annexed to [the Obligation]" ("the Report").*

Part 2 of Schedule 3 set out a methodology for calculating the ASC per dwelling.

Part 3 of Schedule 3 provides:

- i. at paragraph 1, that ASC payments fall due prior to occupation of the 100th, 200th, and 290th dwellings;
- ii. at paragraph 2, that the ASC shall be held by the Council until such time as the Project Board approves their release; and
- iii. at paragraph 3, that the *"ASC shall be spent in accordance with the provisions and principles set out in the Zero Carbon Hub Allowable Solutions Report which shall be interpreted to include energy efficiency improvements, on-site energy generation and district heating to either existing dwellings or Communal Buildings PROVIDED THAT:*
 - a. *the [ASC] shall only be spent on projects within Peterborough;*
 - b. *projects on which the [ASC] are spent shall first be approved by the Project Board in accordance with a process to be agreed by the Project Board;*

- c. *the [ASC] shall only be spent on projects which deliver minimum CO₂ reductions that are at least equivalent to the combined Dwelling Emissions Rates of the particular dwellings to which a given [ASC] payment relates."*

Relevant Context

The Claimant has not paid the ASC despite the payments falling due.

In July 2015, the government announced that the Allowable Solutions initiative would be abandoned, rendering the Report defunct.

In October 2017, the Council demanded payment of £383,268.09 in respect of unpaid ASC.

ZCH was dissolved on 17 September 2024.

In this case, there was no dispute that a contribution towards offsetting carbon emissions served a useful purpose.

Discussion: Ground 1: the Inspector wrongly interpreted the planning obligation

The Claimant's Counsel, Mr Tucker KC, argued the role of ZCH was essential to the operation of Schedule 3 on the basis that the definition of ASC required the application of the provisions and principles of the Report and that such an application in turn required ZCH as the relevant expert body. The Claimant argued that, in the absence of ZCH, there was no relevant expert on the Project Board, leaving a failure of an essential mechanism in the Obligation with the resultant effect that the contributions could be paid to the Council but could then never be spent and would simply fall to be returned by the Council after the 10-year period provided for in the Obligation.

The Deputy Judge provides that whether a contract creates an essential or non-essential mechanism is a mixed question of fact and law, with the most relevant caselaw to the present scenario being the cases of *Sudbrook Trading Estate v Eggleton* [1984] AC 444 and *Manchester Ship Canal Company v Environment Agency* [201] EWHC 1340 (QB).

The key question for the Deputy Judge, therefore, is whether the ASC could be disbursed in the absence of ZCH.

The Deputy Judge distinguishes the *Manchester Ship Canal* case on the basis that in that case there was a complete absence of criteria to be able to discharge the relevant obligation whereas, in the present case, the facts are more akin to those in the *Sudbrook*

case where a price could be determined by objective standards without recourse to a specialist valuer.

The Deputy Judge finds that: *"the Obligation is specific to the types of project which are suitable, the location of those projects and the level of CO2 savings required to offset the dwelling emissions (which themselves are precisely calculated by the formula within the Obligation). There is no complexity in the need for the Project Board to adopt for itself a process of approving the deployment of funds. In each such respect, Schedule 3 of the Obligation provided clear criteria and guidance (as the Inspector correctly analysed)"* and that *"[a] complex and uncertain concept was given a specific, directed and much more certain expression through the specific provisions of Schedule 3. The Inspector correctly recognised this and it was central to her cogent analysis as to why the role of ZCH on the Project Board was not essential"*.

To conclude on this Ground 1, the Deputy Judge finds that the ASC *could* be disbursed in accordance with the terms of the Obligation without the presence of ZCH on the Project Board: there was no failure of an essential mechanism in the Obligation.

Discussion: Ground 2: the Inspector failed to give adequate reasons for their decision

The Deputy Judge noted that there is no statutory duty to give reasons imposed on an Inspector in a decision made in a S106B appeal; however the parties were in agreement that the Inspector was under a duty to give reasons when determining such an appeal, which is consistent with the observations of the Supreme Court in *R (CPRE Kent) v Dover District Council* [2018] 1 WLR 108 at paragraph 26.

Citing *St Modwen Developments Ltd v Secretary of State* [2018] PTSR at paragraph 6 and *South Bucks DC v Porter (No. 2)* [2004] 1 WLR 1953 (HL) at paragraph 36, the Deputy Judge, at paragraph 121 of the judgment, summarised the *standard* of reasons required as being that *"the reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the principal important controversial issues"*.

In dismissing Ground 2, the Deputy Judge found that when the Inspector's decision is read fairly and as a whole, the Inspector's reasons were "cogent and comprehensive" and were legally adequate.

Case summary prepared by Charlie Austin