R (on the application of Erine Kides) v South Cambridgeshire District Council and Peter Stroude and Beazer Homes Central Ltd (Court of Appeal (Civil Division), Aldous, Laws and Parker L.JJ., October 9, 2002)[2]

Resolution to grant planning permission—delay in formal grant of permission—change in circumstances—material considerations—whether Council obliged to refer matter back to committee before granting permission—whether Council discharged its obligations under s.70(2) of the 1990 Act

Erine Kides ("the Appellant") applied for judicial review of a planning permission issued by South Cambridgeshire District Council ("the Council") on October 16, 2000 for the comprehensive development of some 30 hectares of land at Home Farm, Longstanton, in Cambridgeshire. The planning permission was granted to Peter Stroude and Beazer Homes, respectively the major landowner and the developer of the site. A period of almost five years elapsed between the Council's decision, in principle, to grant the planning permission and the issue of the decision notice granting permission. The Appellant's contended that a number of material changes in circumstances took place during that period, in the light of which it was incumbent on the Council, in discharging its statutory duty under s.70(2) of the 1990 Act, to reconsider whether or not to grant planning permission, and that the Council failed to do that. She relied on a number of matters including the publication in March 2000 of Planning Policy Guidance Note 3 ("PPG 3"), government circulars 13/96 (published in August 1996) and 6/98 (published in April 1998) relating to affordable housing, the progress of the Council's Local Plan Review and the fact that in May 1999 the airfield at nearby Oakington Barracks was declared redundant by the Ministry of Defence.

The Council and the interested parties contended that the Council discharged its duty under s.70(2), in that the members of the relevant Committee were at all material times fully aware of the above matters, and that in dealing with the 1995 application the Council had regard to them.

An application by the Appellant for judicial review of the Council's decision to grant the planning permission failed and she appealed to the Court of Appeal.

Held, dismissing the appeal:

1. Section 70(2) of the 1990 Act requires a planning authority, in "dealing with" an application, to "have regard" (among other things) to all "material considerations". In the context of the activities of a planning authority in relation to a planning application it is hard to think of an expression which has a wider or more general meaning than the expression in "dealing with", which, in the context of s.70(2) includes anything done by or on behalf of the planning authority which bears in any way, and whether directly or indirectly, on the application in question. It extends beyond "considering", so as to include administrative acts done by the authority's delegated officers. Nor, is the expression "dealing with" to be limited to the particular acts of the authority in granting or refusing permission under s.70(1). Such a construction is an unjustifiable limitation on the natural meaning of the words. In temporal terms, the first act of a planning authority in "dealing with" an application will be its receipt of the application and its final act will normally be the issue of the decision notice.
2. A consideration is "material", in this context, if it is relevant to the question whether the application should be granted or refused; that is to say if it is a factor which, when placed in the decision-maker's scales, would tip the balance to some extent, one way or the other. In other words, it must be a factor which has some weight in the decision-making process, although plainly it may not be determinative. The test must, of course, be an objective one in the sense that the choice of material considerations must be a rational one and the considerations chosen must be rationally related to land use issues.
3. An authority's duty to "have regard to" material considerations is not to be elevated into a formal requirement that in every case where a new material consideration arises after the passing of a

[2] *W. Williams Q.C., M. Edwards* (Richard Buxton); *A. Robinson* (South Cambridgeshire District Council); *R. Drabble Q.C.* (Marrons).

 © SWEET & MAXWELL AND CONTRIBUTORS

resolution (in principle) to grant planning permission but before the issue of the decision notice there has to be a specific referral of the application back to committee. The duty is discharged if, as at the date at which the decision notice is issued, the authority has considered all material considerations affecting the application, and has done so wtih the application in mind albeit that the application was not specifically placed before it for reconsideration. The matter cannot be left there, however, since it is necessary to consider what is the position where a material consideration arises for the first time immediately before the delegated officer signs the decision notice.

4. At one extreme, it cannot be a sensible interpretation of s.70(2) to conclude that an authority is in breach of duty in failing to have regard to a material consideration the existence of which it (or its officers) did not discover or anticipate, and could not reasonably have discovered or anticipated, prior to the issue of the decision notice. So there has to be some practical flexibility in excluding from the duty material considerations to which the authority did not and could not have regard prior to the issue of the decision notice.
5. On the other hand, where the delegated officer who is about to sign the decision notice becomes aware (or ought reasonably to have become aware) of a new material consideration, s.70(2) requires that the authority have regard to that consideration before finally determining the application. In such a situation, therefore, the authority of the delegated officer must be such as to require him to refer the matter back to committee for reconsideration in the light of the new consideration. If he fails to do so, the authority will be in breach of its statutory duty.
6. In practical terms, therefore, where since the passing of the resolution some new factor has arisen of which the delegated officer is aware, and which might rationally be regarded as a "material consideration" for the purposes of s.70(2), it must be a counsel of prudence for the delegated officer to err on the side of caution and refer the application back to the authority for specific reconsideration in the light of that new factor. In such circumstances the delegated officer can only safely proceed to issue the decision notice if he is satisfied (a) that the authority is aware of the new factor, (b) that it has considered it with the application in mind, and (c) that on a reconsideration the authority would reach (not might reach) the same decision.
7. The test of a "material consideration" is an objective one. It is not for the delegated officer to decide what is a material consideration within the meaning of s.70(2). Hence it is no defence to a claim that an authority has breached its s.70(2) duty for the authority to assert that in issuing the decision notice the delegated officer did not consider that consideration to be "material".
8. It is plain on the facts that not only was the Council fully aware of the five new factors on which the Appellant relies, but it considered them (had regard to them) with the 1995 application specifically in mind, in that the 1995 application was one (and a prominent one) of a number of matters which together set the context in which the new factors were considered and assessed. In the light of the decisions which the Council took, and the policies it adopted, it is entirely clear that had the planning officer taken it upon himself to refer the 1995 application back to committee for reconsideration immediately before issuing the planning permission, the Council's decision would have been the same. Indeed, it goes further than that. Given the very considerable period which had elapsed since the passing of the 1995 resolution, and the understandable concern of members at the continuing delay in negotiating the terms of a s.106 agreement, the inference is that it would have come as a considerable and unwelcome surprise to members had they been told at the beginning of October 2000 that although the s.106 agreement was finally in place it was nevertheless necessary for them specifically to reconsider the 1995 application before a decision notice could be issued pursuant to the 1995 resolution.
9. The judge was right to conclude that in granting planning permission pursuant to the 1995 resolution the Council discharged its duty under s.70(2).
10. As to standing there is an important distinction to be drawn between, on the one hand, a person who brings proceedings having no real or genuine interest in obtaining the relief sought, and on the other hand a person who, whilst legitimately and perhaps passionately interested in obtaining the

relief sought, relies as grounds for seeking that relief on matters in which he has no personal interest. It cannot be just to debar a litigant who has a real and genuine interest in obtaining the relief which he seeks from relying, in support of his claim for that relief, on grounds in which he has no personal interest. A litigant who has a real and genuine interest in challenging an administrative decision must be entitled to present his challenge on all available grounds.

Appeal dismissed.

The following judgments were given.

Jonathan Parker L.J.:

Introduction

1. The issue on this appeal is whether South Cambridgeshire District Council ("the Council"), as local planning authority, discharged its statutory duty under s.70(2) of the Town and Country Planning Act 1990 ("the 1990 Act") to have regard to all material considerations in dealing with an application for planning permission. That in turn raises an issue as to the nature and extent of the statutory duty.

2. In the proceedings Mrs Erine Kides ("the appellant") applies for judicial review of a planning permission issued by the Council on October 16, 2000 for the comprehensive development of some 30 hectares of land at Home Farm, Longstanton, in Cambridgeshire. The planning permission was granted to Mr Peter Stroude and Beazer Homes Central Ltd ("Beazer"), respectively the major landowner and the developer of the site. They are joined in the proceedings as interested parties, and I will refer to them as such.

3. Permission to apply for judicial review was refused by Collins J. on the papers. At a renewed oral hearing Sullivan J. directed that the application for permission and the substantive application be heard together. The hearing took place before Ouseley J. By his order dated October 26, 2001 Ouseley J. refused the appellant permission to apply for judicial review. However, in refusing permission the judge delivered a reserved judgment in which he set out the factual background and gave detailed consideration to the merits of the substantive application.

4. By an order dated June 20, 2002 Sedley L.J. granted permission to appeal against Ouseley J.'s order, and directed that the substantive judicial review hearing remain in the Court of Appeal pursuant to CPR 52.15(4).

5. The instant case is unusual in that a period of almost five years elapsed between the Council's decision, in principle, to grant the planning permission and the issue of the decision notice granting permission. It is the appellant's case that a number of material changes in circumstances took place during that period, in the light of which it was incumbent on the Council, in discharging its statutory duty under s.70(2), to reconsider whether or not to grant planning permission; and that the Council failed to do that. She relies on the following matters in particular:

> "1. Planning Policy Guidance Note 3 ('PPG 3'), published by the Government in March 2000.
>
> 2. Government Circulars 13/96 (published in August 1996) and 6/98 (published in April 1998) relating to affordable housing.
>
> 3. The progress of the Council's Local Plan Review, with particular reference to housing allocations and density. And
>
> 4. The fact that in May 1999 the airfield at nearby Oakington Barracks was declared redundant by the Ministry of Defence."

6. The Council and the interested parties contend that the Council discharged its duty under s.70(2), in that the members of the relevant Committee were at all material times fully aware of the above matters, and that in dealing with the 1995 application the Council had regard to them.

7. Before the judge, the Council and the interested parties contended in addition that permission should be refused on the ground that the claim form was not filed within three months after the grounds to make the claim first arose, pursuant to r.54.5(1) of the Civil Procedure Rules, submitting that the appropriate date for this purpose was a date prior to the issue of the planning permission. In the light of the subsequent decision of the House of Lords in *R (on the application of Burkett) v London Borough of Hammersmith & Fulham* [2002] 1 W.L.R. 1593 (reversing the decision of this court) that contention is no longer open to them, but they nevertheless maintain the contention (which they advanced in the alternative before the judge) that permission to apply for judicial review should be refused as a matter of discretion on grounds of delay.

8. The interested parties also challenged the appellant's standing to bring the proceedings.

Section 70 of the 1990 Act

9. Section 70 of the 1990 Act is in the following terms (so far as material):

> "70(1) Where an application is made to a local planning authority for planning permission—
>
> (a) subject to sections 91 and 92, they may grant planning permission, either unconditionally or subject to such conditions as they think fit, or
>
> (b) they may refuse planning permission.
>
> (2) In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.
>
> (3) . . . ."

The planning history

10. In order to set the appellant's challenge to the planning permission in its proper context, it is necessary to set out the planning history in some detail.

11. The village of Longstanton lies some six miles to the north-west of Cambridge.

12. In 1989 the Cambridgeshire Structure Plan identified Longstanton as a Rural Growth Settlement.

13. In July 1991, following a public inquiry, the Secretary of State for the Environment dismissed Mr Stroude's appeal against the Council's deemed refusal to grant planning permission for the comprehensive development of a 17 hectare site at Home Farm, Longstanton. The Secretary of State noted the Inspector's finding that "the broad location of the development [was] a suitable and a natural extension to the settlement". He also agreed with the Inspector that a bypass for Longstanton was required on environmental grounds, noting also the view of the Highway Authority (Essex County Council) that "the acceptability and extent of the development of the [site] at Home Farm is totally dependent on the provision of the bypass". He agreed with the Inspector that the proposals "could prejudice the resolution of a line for the bypass and that . . . they represent an unacceptable extension of development into the open countryside". He accordingly concluded that planning permission should be refused.

14. Between October 1990 and July 1991 a public inquiry took place at which representations were

received concerning the draft South Cambridgeshire Local Plan. In April 1992 the Inspector reported on those representations. In paragraph 5.50 of his report, the Inspector said this:

> "I regard the land at Home Farm as being in every way the best site for the bulk of the residential land allocated in Longstanton. It is therefore essential that its western limits should be defined so that it can be formally allocated in the Local Plan. This can only be done by preparation of a line for the By-pass, which is something that the County council would not otherwise do in the near future. It is, however, agreed by them that the definition of the general route would not be unduly onerous, and I consider that this should be done as soon as possible so that the land with development potential could be defined. It would also have the advantage that the land to be safeguarded for the By-pass could be defined on the Inset Map and an appropriate safeguarding policy included in the Local Plan. This would, however, only be acceptable if there is a good chance of the By-pass being constructed during the Plan period."

15. The Inspector accordingly recommended:

> "... that the County Council be asked to define a safeguarding line for the proposed Longstanton By-pass as soon as possible."

16. In 1993 the Local Plan was adopted. It allocated two sites in Longstanton for residential development, one of which was at Home Farm. The site at Home Farm was intended to provide for up to 250 dwellings up to 2001. Other land was allocated for employment development. However, the Local Plan stated that substantial development at Longstanton was dependent on the prior completion of a bypass. It was contemplated that this might be secured under a s.106 agreement with the developer, but it was not at that stage contemplated that the developer would undertake to fund the entire cost of the bypass.

17. In May 1995 the interested parties submitted an outline planning application ("the 1995 application") for the comprehensive development of the 30 hectares site at Home Farm, Longstanton and for the construction of a complete bypass, the entire cost of which was to be borne by the developer.

18. On December 6, 1995 the Council's planning officer reported to the Council on the 1995 application. The report recommended that the 1995 application be refused, on the ground (among other things) that a commitment to the provision of some 250 dwellings beyond the year 2001:

> "... would prejudice and pre-empt the proper consideration and evaluation of all alternatives for future growth in the District during the statutory Local Plan review process."

19. The report also noted, with some surprise, that Longstanton Parish Council (of which the appellant was a member) endorsed the 1995 application unreservedly.

20. At its meeting on December 6, 1995 the Council rejected the planning officer's recommendation and resolved in principle:

> "... to approve [the 1995 application], subject a report covering draft conditions and draft Section 106 Agreement being submitted for approval by Committee at a future meeting."

21. I will refer to this resolution as "the 1995 resolution".

22. A report to the Council's Planning Committee dated March 6, 1996 noted that a first discussion draft of a s.106 Agreement had been prepared and circulated, but stated that it was too early to advise members of the progress of negotiations. The report recommended that the 1995 application be referred to the Secretary of State:

 © SWEET & MAXWELL AND CONTRIBUTORS

"... along with all representations and a copy of this agenda report which summarises progress to achieve [the 1995 resolution]."

23. At its meeting on March 6, 1996, the Planning Committee resolved to refer the 1995 application to the Secretary of State as recommended, on the footing that it involved a departure from the Local Plan.

24. On March 29, 1996 the Government Office for Eastern Region ("the GOE") notified the Council of the issue of an Article 14 direction to the effect that the Council was not to determine the 1995 application while the Secretary of State considered whether to call it in. In a covering letter, the GOE said this:

"The Article 14 direction has been issued, as it is considered that the significance of the development upon the village is such, that the determination of the planning application should be achieved in the context of the local plan review, which your Council is about to commence. The scale of the proposal indicates that it goes to the heart of the local plan's roll-forward of housing land provision to 2006 and its determination at this time could be considered to be premature and prejudicial to the local plan process."

25. By a Report dated May 1, 1996 officers reported the issue of the Article 14 direction to the Planning Committee.

26. On August 1, 1996 the GOE notified the Council that after further consideration the Secretary of State did not, after all, wish to intervene and that the Council was free to determine the 1995 application as it deemed fit.

27. Later in August 1996, the first of the two Government Circulars relating to affordable housing (13/96) was published.

28. On September 4, 1996 the Secretary of State's decision not to intervene in relation to the 1995 application was reported to the Planning Committee. The Planning Committee was also reminded that outline planning permission could not be issued pursuant to the 1995 resolution:

"... until negotiations upon the Section 106 Agreement have been successfully concluded."

29. In December 1997, the Council published the consultation draft of the South Cambridgeshire Local Plan Review 1997. The Review included "POLICY LONGSTANTON 1" in the following terms (so far as material):

"Two areas totalling 21 ha are allocated for some 500 dwellings north of Over Road.

Development of this site will be dependent upon the provision of a development related bypass secured through a local agreement. The agreement shall ensure that no more than 250 dwellings will be occupied before the bypass—including all necessary junctions and road links to the existing highway network is complete."

30. On April 8, 1998 the second of the two Government circulars relating to affordable housing (6/98) was published. The circular advised planning authorities and developers of the need to ensure that new development provided an appropriate mix of housing and other uses, and of different types of households. In its introduction it advised that where there was evidence of a need for affordable housing, Local Plans should include a policy for seeking an element of such housing on suitable sites. Paragraph 10 of the circular set out a number of criteria to be applied by planning authorities in formulating policies for affordable housing to be included in Local Plans, and in assessing the suitability of sites to be identified in the Plan and of any additional sites in respect of which allocations had not as yet been made.

31. In May 1998 a Development Brief for the site was published and sent to a wide range of consultees. In December 1998 the Development Brief was adopted by the Council as constituting Supplementary Planning Guidance.

32. In February 1999 the Local Plan was placed on deposit, in the form of the consultation draft, in order to give members of the public and other interested parties the opportunity to submit representations. In addition to POLICY LONGSTANTON 1, the draft Local Plan contained the following:

> "4.20 The [site at Home Farm] is not included within the requirements of affordable housing because it is the subject of a planning application where the Council has already resolved to grant planning permission under the provisions of the 1993 Local Plan without any requirements for affordable housing. At the time of the resolution, the Local Plan did not include a policy requiring affordable housing on allocated land and there was no affordable housing needs survey as required by government guidance. Any new planning application would not be subject to that resolution, and in the light of the high level of housing need identified by the District Wide Housing Needs Survey, it would be appropriate to consider whether affordable housing should be sought from this site. However, whether the site could stand the full 30% recommended by the survey, in addition to a bypass and other infrastructure, would need to be the subject of negotiations with the applicant.
>
> . . .
>
> 67.18 The District Council considers that the provision of the bypass is crucial for the village and therefore allocated a larger area for a housing estate than would otherwise be appropriate. In this instance there is no requirement for affordable housing as set out in Policy HG9 because of the need to ensure the bypass and other community facilities such as a village green, shop and surgery.
>
> . . .
>
> 67.20 The site of Home Farm, surrounded on three sides by existing housing, is considered appropriate for residential development. This would also enable the creation of a village green at the junction of Over Road and High Street. This, together with local shopping or community facilities which will be required because of the increased population, will allow the creation of a clearly identified centre to the village. However, the major area for housing development, as it will abut the bypass will require a high degree of screening and landscaping to reduce the visible impact and to create a satisfactory residential environment. . . ."

33. Thereafter, a large number of representations concerning the draft Local Plan were received from members of the public and other interested parties.

34. Throughout this period, negotiations as to the terms of a s.106 Agreement in relation to the 1995 application were still on foot. It appears that one of the causes of the delay in concluding a s.106 Agreement was the fact that part of the site the subject of the 1995 application was owned by Cambridgeshire County Council, which was reluctant to enter into obligations involving a contribution to the cost of a bypass and associated road improvements, and which was looking to realise the maximum possible price for its land. For its part, the Council was not prepared to allow planning permission to be issued pursuant to the 1995 resolution in the absence of a s.106 Agreement in respect of all the land comprised in the Longstanton site. An attempt by Beazer to acquire the County Council's land proved unsuccessful. The delays accordingly continued.

35. At the same time, negotiations were also on foot between the Council, the Parish Council, and the

interested parties in relation to various ancillary matters, including the provision and maintenance of an area of public open space within the site.

36. In March 1999 the interested parties, frustrated by the continuing delay in the issuing of planning permission pursuant to the 1995 resolution (a delay caused, as they saw it, by the attitude adopted by the County Council), submitted a second planning application ("the 1999 application") which excluded the Council's land. The 1999 application sought permission for housing development over an area of 9.5 hectares at an average density of not less than 25 dwellings per hectare. It also provided for the construction of Stage 1 only of the proposed bypass, as a temporary measure (this being in contrast to the 1995 application, which, as noted earlier, provided for the complete bypass to be constructed at the cost of the developer).

37. The Council did not determine the 1999 application, and the interested parties accordingly appealed to the Secretary of State.

38. At the beginning of October 1999 the Local Plan was published, with an amendment relating to affordable housing which reflected the guidance contained in the two Government Circulars. "POLICY LONGSTANTON 1" was also amended by the addition of a paragraph in the following terms (so far as material):

> "Development of this site will be subject to Policies HG9 ... and HG10 for the provision of affordable housing. Where affordable housing is required, planning permission or renewal of planning permission will not be granted until a legal agreement has been signed ensuring such provision."

39. On October 6, 1999 the planning director reported to the Planning Committee on the 1999 application. The report set out the background history, including the 1995 resolution, and referred to the Council's policies in relation to affordable housing on allocated sites. After setting out the amended "POLICY LONGSTANTON 1", the report went on to list a number of representations made by residents of Longstanton. Representation numbered 2 in the report was in the following terms:

> "Empty houses will soon become available at Oakington Barracks. A greenfield site should not be developed in advance of that event or any other decision upon the future of the barracks. Brownfield development should take precedence. The large scale of potential development would suggest that it would provide for a significant amount of off-site infrastructure, which might include a Longstanton bypass."

40. Representation numbered 10 was in the following terms:

> "There have been material changes in circumstances since the resolution of the Council to approve the last application [a reference to the 1995 application]. These include:
>
> - the emergence of the former airfield and barracks at Oakington/Longstanton as a likely area for large scale and comprehensive development within the reasonably near future;
> - the publication of new Government guidance, such as circulars 1/97 and 6/98, which require different benefits from large schemes, such as affordable housing provision;
> - a third major change is the proposals themselves, which do not propose a bypass for Longstanton."

41. Representations numbered 12, 13 and 14 were in the following terms:

> "12. The determination of the application would be premature in advance of the Public Inquiry into the Local Plan review, which would offer the appropriate forum to debate such a major issue.

 © SWEET & MAXWELL AND CONTRIBUTORS

13. The proposed development at Longstanton is a major departure from the adopted Local Plan and no justification has been given for this departure in advance of the Local Plan Inquiry.

14. Any approval of the application would pre-empt the proper consideration which must be given to the Local Plan review on a district-wide basis."

42. Under the heading "PLANNING COMMENTS", the report said this:

"The application is now before the Secretary of State as an appeal for his decision. He has directed that the proposal does not require the submission of an Environmental Impact Assessment.

The Council cannot issue a decision notice [i.e. in relation to the 1999 application]. But it should consider its position on the principal merits of the scheme in order to put its case at any future inquiry.

The starting point is the Council's resolution of 6th December 1995 that it was minded to approve a mixed development of 21 hectares housing (some 500 dwellings), 6.3 hectares business park, a B1050 bypass for Longstanton and related road works, extension to recreation ground (2.3 hectares), village green including land for local shop and surgery, open space, landscaping and related infrastructure. The Council considered that the provision of a bypass, financed by the development, outweighed the policy designations which would have limited the number of houses to be completed in the village to 250 allocated in the approved Local Plan 1993 and 400 houses normally permitted in a Rural Growth Settlement.

The Secretary of State's decision of 1st August 1996 to allow the Council to determine the application as it deemed fit is of relevance.

The outline application would have been approved by now had the interested parties and landowners reached a financial settlement which would have enabled the Section 106 Agreement to be signed.

The Council needs to assess the new application against any material change in circumstances since those decisions on the earlier applications.

The principal changes are:

1. the publication of the [Local Plan] and the representations made to that Plan;

2. the publication of Government guidance in Circular 6/98 encouraging authorities to include policies in local plans for seeking an element of affordable housing on suitable sites; and

3. the application itself, which does not propose a complete bypass for Longstanton and which proposes housing . . . on land not shown for such development on either the 1995 application or as part of a residential allocation in the Local Plan Deposit 1999."

43. Then, after referring to the local plan, the report continued:

"Significantly, if the Regional Planning Guidance accepts the Panel's Report suggestion that a new settlement should be accommodated to the north, but close to Cambridge, the proposals will need to be examined through the Structure Plan process and ultimately into the Local Plan. So it would be premature to advance Oakington Barracks in isolation or in the context of a new settlement in this Local Plan Review . . ."

44. Under the heading "Affordable Housing", the report quoted para.4.20 of the Local Plan (see para.32 above) and summarised the interested parties' representations on the issue of affordable housing as follows:

> "1. It is not necessary to provide additional affordable housing in Longstanton for needs of Longstanton;
>
> 2. The community benefits from the provision of the Longstanton bypass and its capital costs are to be financed from the development allocated for Longstanton outweigh the need to provide affordable housing . . ."

45. The report continued:

> "In the consideration of the representations of the Deposit Local Plan it was suggested that any new planning application would not be subject to the earlier resolution (not to require affordable housing), and in the light of the high level of housing need identified in the District Wide Housing Needs survey, it would be appropriate to consider whether affordable housing should be sought from this site, though not necessarily the full 30% recommended by the survey."

46. Turning to the merits of the 1999 application, the report commented that the fact that the application did not include the complete bypass represented a serious deficiency in the scheme, observing that the 1995 resolution was passed:

> ". . . because it would ensure the provision of the complete bypass at entirely the developer's expense."

47. In conclusion, the report recommended:

> "A. that the Council reject the 1999 application on the grounds (1) that it did not provide for a complete bypass and (2) that it proposed housing development in a location which had not been allocated in the Local Plan and which was poorly related to the remainder of the village and services within it; and
>
> B. that the Council seek to secure a proportion of affordable housing based upon housing needs, as part of a section 106 Agreement."

48. At the meeting of the Planning Committee held that day (October 6, 1999) the recommendations in the report were adopted.

49. On October 8, 1999 a special meeting of the Council was held to assess the representations received concerning the draft Local Plan. In evidence is a tabulated document in which the various representations are recorded, together with, against each representation, the Council's assessment of the representation and any recommendation for a change in the Plan in the light of the representation.

50. One such representation was to the effect that the Plan should include provision for affordable housing for local people on the Longstanton site. Complaint was made that the Plan made provision for affordable housing in relation to other, smaller, sites, and that it was inequitable that the Longstanton site should be treated differently. The document records the Council's assessment of this representation in the following terms (so far as material):

> "The scale of development proposed is dependent upon the provision of a development related bypass. The District Council has resolved to grant planning permission in respect of a 1995 application [a reference to the 1995 resolution] without the need for affordable housing. However, it would be appropriate to consider whether this provision should be sought from this site if any subsequent planning application were to be submitted . . . Such a provision would be subject to negotiation with the applicant . . ."

51. In the light of this representation, the Council resolved to change the Plan by deleting the last

sentence of para.67.18 (quoted earlier) and substituting a passage making it clear that any new planning application would not be subject to the 1995 resolution.

52. Representations were also made as to the availability of land following the expected closure of the airfield at nearby Oakington Barracks, which the Ministry of Defence had, in May 1999, declared to be redundant. The Council's assessment of these representations, as recorded in the document which is in evidence, includes the following:

> "The site at Oakington Barracks is of strategic importance, which the panel report identifies would require a long lead in time, clearly beyond the time scale of this local plan. It would be premature to identify this site [*i.e.* Oakington Barracks] in advance of the agreement of a Cambridge Sub Region Strategy beyond the period to 2006."

53. The Council recommended no change to the Plan to reflect the representations relating to Oakington Barracks.

54. In November 1999 the proposed changes to the Local Plan were published, and were the subject of further consultation.

55. In March 2000 the Government issued PPG 3. For present purposes it is necessary to refer only to paras 31, 32 and 38 of PPG 3, which were in the following terms (so far as material):

> "31. In deciding which sites to allocate for housing in local plans and UDPs [unitary development plans] local planning authorities should assess their potential and suitability for development against each of the following criteria:
>
> - the availability of previously-developed sites and empty or underused buildings and their suitability for housing use;
> - the location and accessibility of potential development sites to jobs, shops and services by modes other than the car, and the potential for improving such accessibility;
> - the capacity of existing and potential infrastructure . . .
> - the ability to build communities . . .
> - the physical and environmental constraints on development of land . . .
>
> Allocating and Releasing Land for Development
>
> 32. In determining the order in which sites identified in accordance with the criteria set out in paragraphs 30 and 31 should be developed, the presumption will be that previously-developed sites (or buildings for re-use or conversion) should be developed before greenfield sites. The exception to this principle will be where previously-developed sites perform so poorly in relation to the criteria listed in paragraph 31 as to preclude their use for housing (within the relevant plan period or phase) before a particular greenfield site.
>
> . . .
>
> 38. Determining Planning Applications
>
> . . .
>
> In considering planning applications for housing development in the interim, before development plans can be reviewed, local authorities should have regard to the policy contained in this PPG as material considerations which may supersede the policies in their plan . . . Where the planning application relates to development of a greenfield site allocated for housing in an adopted plan or UDP it should be assessed, and a decision made on the application, in the light of the policies set

 © SWEET & MAXWELL AND CONTRIBUTORS

out in this guidance. Comparison with available previously-developed sites against the criteria in paragraph 31, and in the light of the presumption in paragraph 32 and the policies on design, layout and efficient use of land, including car parking, will be particularly relevant. Where a proposed housing development involves the use of a previously-developed site or the conversion of existing buildings, the proposal may need to be amended in accordance with this guidance, for example, in relation to design, layout, density and parking."

56. At a meeting on April 12, 2000 the Planning Committee noted that in the light of PPG 3 a review of housing allocations in the Local Plan would have to be undertaken as further preparation for the Local Plan Inquiry.

57. On May 3, 2000 the Council's Head of Legal Services reported to the Planning Committee on the progress which had been made in negotiating a s.106 Agreement relating to the 1995 application. The particular issue which had arisen at that stage was whether the Council was willing to assume the obligation of maintaining an area of public open space within the proposed development, should the Parish Council decide not to do so. In the introduction to the report, the Head of Legal Services reviewed the history of the matter, as follows:

"Negotiations hitherto have proved very difficult indeed and although the Parish Council has instructed solicitors to assist it in its broad deliberations, it is not clear that negotiations in the normal form will be completed and a planning permission issued in the foreseeable future. The development is important for Longstanton, not least because it will afford the provision of a bypass which is much needed but also because it will advance the housing provision in our district. This matter has gone on since 1995 and has been held up by what have been unsuccessful negotiations with the County Council as part landowner. Those negotiations have now at last been concluded and the County Council has decided to sell its interest in the relevant land to developers (subject to planning permission) thereby allowing the whole project to go forward. . . ."

58. The report recommended that the Council should agree to adopt the public open space should the Parish Council be unwilling to do so. The recommendation was duly adopted by the Planning Committee.

59. At its meeting on June 7, 2000 the Planning Committee received a verbal report from the Head of Legal Services on the progress of negotiations with the Parish Council concerning maintenance of the area of public open space. The report was to the effect that negotiations were continuing but that a decision was expected shortly. The minutes record members' concern at the prospect of any further delay. The relevant passage in the minutes reads as follows:

"Members welcomed the negotiations but expressed concern that extended discussions might significantly delay the process. The Head of Legal Services reiterated that a decision was expected quickly and that the issue would be returned to Committee in July if negotiations proved unsuccessful."

60. At the July meeting of the Planning Committee (which took place on July 12, 2000), the Committee had before it a document entitled "A Study of [PPG 3] on The Local Plan Review within the Context of the Approved Cambridgeshire Structure Plan Review 1995". I will refer to this document as "the Study". Also before the Committee was a report on the Study by the planning director. It is to be noted that although the Committee is referred to in this context as the "Planning Policy Committee", the evidence is that the Planning Policy Committee was in fact the same committee as the Planning Committee, albeit under another name.

61. The Study contained a district-wide review and appraisal of housing allocations. Paragraph 23 of the

Study, under the heading "Site Assessment Criteria (Physical and Environmental Constraints)" was in the following terms (so far as material):

> "Paragraph 32 of [PPG 3] makes it clear that whilst brownfield sites should be developed before greenfield sites, this should not be so where brownfield sites perform so poorly in relation to the criteria in paragraph 31. In the context of this study it is considered that sites in unsustainable villages [which included Longstanton: see below] fall into this category of poor performance. . . ."

62. Paragraph 30 of the Study, under the heading "Conclusions from the Analysis—Selection of Sustainable Locations", was in the following terms (so far as material):

> ". . . There are a small number of villages where the Local Plan makes allocations in villages which do not meet the 'sustainable' criteria. In each case there are specific reasons justifying the proposed development and these accord with criterion (4) of paragraph 31 of [PPG 3], . . . Thus:
>
> . . .
>
> - Longstanton, a Rural Growth Settlement designated in order to provide a much needed bypass, together with an extension to the recreation ground, a village green and a shop . . ."

63. Paragraphs 37 to 40 of the Study dealt with the question of density. In para.39 it was proposed that for those sites where there were no identified constraints, the notional average capacity for housing allocations be raised from 25 dwellings per hectare to 30 dwellings per hectare. Paragraph 40 of the Study was in the following terms (so far as material):

> "This should not preclude the use of a lower (or higher) density if local circumstances dictated that there are material considerations to do so. These are:
>
> . . .
>
> - Longstanton where the Local Plan specifies a maximum of 500 dwellings within the agreed line of the proposed bypass and where planning permission has been agreed in principle [a reference to the 1995 resolution] and negotiations on the required Section 106 Agreement are close to completion. . . ."

64. Under the heading "Conclusions", paras 57 and 58 of the Study were in the following terms:

> "57. PPG 3 requires local planning authorities to consider increasing the density of new housing developments. Whilst densities of the order of 30–50 dwellings per hectare may be appropriate in urban situations, an average density of 30 dwellings per hectare is appropriate in most rural situations. The conclusion is therefore drawn that average notional density in South Cambridgeshire should be increased from 25 to 30 dwellings per hectare.
>
> 58. The suggested approach of increasing housing density and a revised assessment of windfalls leads to the conclusion that there should be a reduction in the overall level of housing allocations, and a number of sites are identified which could be deleted to bring the overall level to that which is necessary to meet the Structure Plan requirement."

65. In his report on the Study, the planning director informed the Planning Committee that the Inspector conducting the Local Plan Inquiry had arranged a number of "round table" sessions at which objectors could discuss relevant issues informally with the Inspector and representatives of the Council. He further informed the Committee that the Inspector had identified a number of specific issues to be debated, including:

 © SWEET & MAXWELL AND CONTRIBUTORS

"Should existing allocations be reviewed?"

66. The report went on to recommend that the Inspector be advised (among other things) that the view of the Council as to density was that, unless local circumstances should dictate otherwise, the notional average housing density for sites allocated in the Local Plan be increased from 25 to 30 dwellings per hectare in accordance with PPG 3; and that in view of the increased density permitted by PPG 3 a number of sites which were allocated for housing development in the Local Plan be deleted. Seven sites were then listed. The list did not include the site at Home Farm which was the subject of the 1995 application.

67. These recommendations were duly adopted by the Planning Committee at its meeting on July 12, 2000.

68. The recommendations of the Planning Committee came before the full Council at its meeting on the following day, July 13, 2000. The Council adopted the recommendations of the Planning Committee, save that it reduced the list of allocated sites to be deleted from the Local Plan from seven to four.

69. At a meeting of the Planning Committee on August 2, 2000 the planning director reported, in relation to the 1995 application, that it was likely that agreement would shortly be reached with the Parish Council concerning the public open space, and that negotiations in relation to the long-outstanding s.106 Agreement were at an advanced stage. It was accordingly anticipated that planning permission would be issued within the next few days pursuant to the 1995 resolution. The minutes record that "members approved this approach".

70. On October 16, 2000 the decision notice on the 1995 application was issued, granting outline planning permission pursuant to the 1995 resolution.

71. Finally, so far as the planning history is concerned, I should record that throughout the period from the passing of the 1995 resolution on December 6, 1995 until the issue of the planning permission on October 16, 2000 it was the practice of the planning director to place before the Planning Committee, at quarterly intervals, a list of all outstanding planning applications. These lists would have included the 1995 application.

The arguments before the judge

72. In summarising the argument before the judge, I omit reference to the issue whether the claim form was filed within three months after the grounds to make the claim first arose (see r.54.5(1) of the Civil Procedure Rules) since, as explained earlier, that issue was put to rest by the decision of the House of Lords in *Burkett*.

The appellant's contentions

73. As a matter of law, it was contended on behalf of the appellant, relying on *R v West Oxfordshire District Council Ex p. Pearce Homes Ltd* [1986] J.P.L. 523 at 527 *per* Lord Woolf, that in discharging its duty under s.70(2) a local planning authority is required to reconsider a resolution to grant planning permission if there is a change in material considerations occurring after the passing of the relevant resolution.

74. As to the facts, it was contended on behalf of the appellant that PPG 3 marked a radical change in Government policy with regard to the location and design of housing sites, with an emphasis away from greenfield development. Reliance was also placed in this regard on the two Government circulars

relating to affordable housing. In the light of these changes in Government policy, a housing scheme considered in 2000 would, it was submitted, be subject to very much more stringent requirements in relation to density and provision for affordable housing than those which obtained in 1995. It was also contended that it was a material consideration that during the period following the 1995 resolution the Oakington Barracks site, a brownfield site, had become available for early housing development. An additional material consideration, it was submitted, was whether a grant of planning permission pursuant to the 1995 resolution would be premature in that it would prejudice the outcome of the Local Plan Review.

75. These changes, it was submitted, were sufficient to trigger the Council's duty to reconsider the 1995 resolution, yet the Planning Committee was never asked to, nor did it, undertake such a reconsideration.

76. On the question of promptness, it was submitted that although the proceedings were not issued until some six weeks after the issue of the planning permission, the appellant lost no time in instructing a specialist solicitor, Mr Richard Buxton, who in turn communicated promptly with the Council in order to establish whether there was a proper basis for judicial review proceedings. Reliance was also placed in this connection on the enormous volume of documentation involved. In the circumstances, it was submitted, the appellant could not have been expected to have acted more expeditiously than she did.

The interested parties' contentions

77. The interested parties submitted, as a preliminary point, that the appellant had no standing to bring the proceedings since she relies, among other things, on the absence of any provision in the 1995 application for affordable housing, which was not a matter of any real concern to her.

78. As to the merits, the interested parties accepted, as they were bound to do, that in dealing with the 1995 application the Council was under a duty to have regard to all material considerations; but it was submitted that this did not mean that an officer to whom had been delegated the authority to issue the consent was obliged to refer the matter back to committee whenever a change of circumstances, however small, occurred, and regardless of the views expressed by the planning authority in other contexts. It was submitted that the officer to whom such a power has been delegated is entitled to act on the resolution provided that there has not been a change of circumstances of a kind which means that the relevant committee should be invited to form a fresh judgment. In the instant case, it was submitted, it was plain that the planning officer's mandate remained good, and that no question of referral arose.

79. As to affordable housing, the interested parties pointed out that the Council specifically addressed this consideration in the context of the 1999 application. As to density, this too was a matter specifically considered by the Council in 2000, in the context of the Local Plan Review. In the result, the Council had decided not to alter the density of the Home Farm site or to delete it from the Local Plan. On the question of prematurity, it was submitted that the Council was fully aware of the scale of the proposed development and its relationship with the emerging Local Plan, through the involvement of members of the Planning Committee with matters of policy (the "Planning Policy Committee" being the Planning Committee under another name). As to Oakington Barracks, it was submitted that any development of the airfield was some way off. Reference was made in this connection to the fact that the Ministry of Defence had made it clear that the development of the site required "positive outputs from a number of relevant studies to be progressed".

80. As to promptness, it was submitted on behalf of the interested parties that there had been substantial

delay and inaction on the part of the appellant for which she was entirely to blame, and that in consequence the interested parties had suffered prejudice. It was accordingly submitted that relief should in any event be refused as a matter of discretion.

The Council's contentions

81. The Council's contentions were substantially the same as those advanced on behalf of the interested parties, save that the Council did not take any point as to the appellant's standing to bring judicial review proceedings.

The judgment of Ouseley J.

82. After setting out the planning history, the judge turned (at para.65 of his judgment) to the issue as to the nature of the Council's duty in determining the 1995 application. He concluded that the duty continued up to the moment when the decision notice was issued, and that the discharge of that duty might, depending on the facts of the particular case, require that an earlier decision be reconsidered. However, in para.66 of his judgment he rejected the submission made on behalf of the appellant that only a formal reconsideration can ever suffice for compliance with s.70(2) in the event of new material considerations arising between a resolution to grant planning permission and its actual grant.

83. In para.69 of his judgment the judge said this:

> "In my judgment it is a question of fact whether in the circumstances in any particular case the duty has been fulfilled. What actual steps have to be taken in order to fulfil it, as a matter of fact, depends on the circumstances of the case. Very often the circumstances will indeed require a formal Committee meeting to reconsider an earlier resolution in the light of new circumstances. However I do not accept that that is required in law if, on the facts of a particular case, it is possible to demonstrate that regard was had to material considerations in some other way."

84. In para.71 of his judgment, the judge rejected the contention, advanced primarily by the interested parties, that the relevant consideration was whether there was any good reason for the officer with delegated authority to issue the planning permission to refer the matter back to the Planning Committee. In relation to that contention, the judge said this:

> "The delegation of the consideration of new material considerations is not answer to the Appellant's claim: first, no resolution generally or particularly delegating the necessary powers of determination was produced to me; and, secondly, a power to determine whether an application should be brought back to Committee and to deal with mechanical or trivial issues which might reasonably not require Committee consideration, is very different from a power to determine an application in these circumstances, where new factors of obvious significance had arisen."

85. In para.72 of his judgment the judge observed that there was no basis for supposing that members of the Council were unaware that the 1995 resolution was not binding on the Council or that it disentitled the Council from revisiting the question whether planning permission should be granted.

86. As to whether, on the facts, the Council had discharged its statutory duty in relation to the 1995 application, the judge concluded that there could be no doubt that the members of the Planning Committee were well aware of the contents and significance of PPG 3, with its emphasis on priority being given to brownfield sites and on higher density for housing development. Moreover, he commented that at no time did members express a desire to change their minds about granting the 1995 application, as they could easily have done.

87. As to the debate concerning the Local Plan, the judge (in para.74) accepted that this took place in a different context from that of the 1995 application, but he went on to observe that the objections to the Local Plan, which were considered by the Council, were:

> "... inevitably objections to the development itself; consideration of them as policy objections necessarily involved consideration of the principle of the development."

88. In para.77 of his judgment the judge concluded that the 1995 application was "inextricably intertwined" with policy issues relating to the Local Plan and to the allocation of sites for housing development. He further concluded that the objections were:

> "... considered and weighed on their merits and not dealt with as if, however sound they might be, the [1995] resolution had sold the pass."

89. The judge then considered in turn the specific changes relied on by the appellant.

90. As to PPG 3, the judge concluded that the Council's consideration of PPG 3 went beyond a general awareness of its existence, and that in its analysis of the planning director's report on PPG 3 the Council clearly took account of the competing considerations relating to development at Longstanton.

91. As to density, the judge said this (in para.80):

> "Density was specifically considered in relation to Longstanton and an exception to the general approach was indicated, not because of the 1995 resolution, but because of the purpose of the housing development and its relationship to services and the bypass."

92. The judge went on to point out that density was in any event a reserved matter, which was not covered by the grant of outline planning permission. He continued (in para.80):

> "The consideration of [PPG 3] in the context of this study inevitably involved a consideration of the 1995 application—the maintenance of the allocation was not the consequence of the 1995 resolution but was the consequence of the consideration by the Council and its desire to see the development go ahead with the advantages which it would bring, some of which were relevant to PPG3 particularly in the context of a rural district with few brownfield sites available."

93. As to Oakington Barracks, the judge concluded (in para.81) that:

> "Oakington Barracks was not rejected as an objection because the [1995 resolution] precluded consideration being given to it; it was rejected because it did not have sufficient merit to warrant the allocation being deleted and hence to warrant planning permission being refused."

94. As to affordable housing, the judge concluded (in para.82) that the policies set out in PPG 3 and in the two Government Circulars were considered by the Council in relation to the 1995 application, and that a view was reached that "the current package would not be disturbed". He continued (in para.83):

> "... the substance of the consideration involved both the current and any potential fresh application and the substance of the conclusion was that the current application now enjoyed an agreed package in which the question whether or not to have affordable housing had been considered and rejected because of other and high development costs."

95. As to prematurity, the judge observed that the Planning Committee was obviously very well aware throughout 2000 that the Local Plan Inquiry was under way, that there were objections to the Local Plan and that the allocation at Longstanton was very important to the Plan and to Longstanton itself. He continued (in para.85):

"It is clear that the Planning Committee wanted the development rapidly to proceed. It obviously rejected the very notion that the grant of permission in 2000 following a resolution in 1995 was premature in relation to a Local Plan which was more advanced than it had been in 1995."

96. The judge went on to note that in considering the 1999 application the Planning Committee was specifically alerted to the question of prematurity, to the possible future availability of Oakington Barracks, and to the question of affordable housing.

97. In paras 87 and 88 of his judgment, the judge said this:

"87. I accept that there was not one single meeting at which the new material considerations were formally considered as a group together with other relevant factors explicitly in relation to the 1995 application. This might matter if the Planning Committee had accepted the strength of individual objections on separate occasions which individually did not justify a change in decision, but which cumulatively might have done had they been so considered. However, here the Council did not accept that any of the new factors were justified or significant objections at all, let alone ones which taken together could lead to a different result.

88. I consider that the Council did fulfil its section 70 duty when granting planning permission in relation to all those material considerations. It considered them principally but not exclusively through the local plan process but it clearly maintained its view having considered each of them."

98. The judge accordingly rejected the application on its merits.

99. The judge then turned (in paras 90 to 100 of his judgment) to the question of delay. In this part of his judgment the judge addressed the issue as to when time started to run pursuant to rule 54.5(1) of the Civil Procedure Rules. As explained earlier, that is not longer a live issue in the light of the House of Lords' decision in *Burkett*. In the result, the judge concluded that the proceedings were issued out of time. Accordingly it was unnecessary for him to address the alternative argument based on delay, viz. that relief should be refused as a matter of discretion.

100. The judge then turned (in paras 101 to 110 of his judgment) to the question of the appellant's standing to bring the proceedings. He rejected the interested parties' submission that the appellant had no standing at all, but he accepted a narrower submission that in relation to the issue as to affordable housing she was "a mere meddler" and had no standing. He concluded (in para.109) that the appellant had no interest at all in securing provision for affordable housing, and that she had seized adventitiously on a point of no interest to her. He accordingly concluded that it would be an abuse of process for the argument based on affordable housing to proceed, and that permission to proceed with that particular argument should be refused.

101. Finally, under the heading "Discretion", the judge said this (in paragraph 111):

"If I had granted permission, and if the affordable housing ground had been the basis of success for the appellant as a matter of law, I would have refused her relief in the exercise of my discretion for the reasons which I have given in relation to standing."

The arguments on this appeal

102. For the appellant, Mr Wyn Williams Q.C. submits that, on the true construction of s.70(2), the Council was required to give focused consideration of the 1995 application in the light of all material considerations, as opposed to what he described as tangential consideration, where material considerations were considered in different contexts. He does not go so far as to submit that there must

in every case be a separate meeting, at which the application in question is considered: rather, he submits that there has to be a process in which the court and the parties affected can be confident that all material considerations have been considered, both individually and collectively, and that a balancing process had been undertaken. Anything short of that will, he submits, fall short of what the statute requires. In practical terms, he submits, the sensible course is to hold a meeting at which all considerations material to a particular application can be considered in the specific context of that application. He submits that the statutory duty continues up to the point when the decision notice is issued. He points out the only meeting at which the 1995 application was considered in the light of all material considerations was the meeting on December 6, 1995 at which the 1995 resolution was passed and that no further such meeting took place prior to the issue of planning permission on October 16, 2000.

103. He submits that there are good policy reasons for adopting such an approach to the construction of s.70(2), in that the construction for which he contends would be conducive to good and consistent decision-making and would serve to promote transparency in the decision-making process. He submits that it is highly unsatisfactory that it was necessary for the judge in the instant case to, in effect, carry out a paper-chase in order to determine whether the Council had discharged its statutory duty. Members of the public ought to be able to see for themselves what the decision-making process was.

104. Turning to the words of s.70(2), Mr Wyn-Williams submits that the expression "[i]n dealing with ..." must relate back to the planning authority's functions under subs.(1). Thus, since the act of the Council in considering objections to the Local Plan is not an activity within subs.(1), it cannot constitute "dealing with" a planning application.

105. He submits that s.70(2) requires that there should be a thought process which is focussed specifically on the application which is being dealt with.

106. Turning to the facts of the instant case, Mr Wyn-Williams submits that at no stage did the Council engage in the requisite thought process. When new material considerations emerged (for example, in PPG 3 or in the Circulars relating to affordable housing) they were considered piecemeal and sequentially, and not specifically in the context of the 1995 application. On the question of prematurity, Mr Wyn-Williams submits that that question too fell to be considered as part of the ongoing planning process and the continuing evolution of the Local Plan. He submits that the various threads were never drawn together, with the consequence that the point was never reached in the decision-making process where the decision-maker was in a position to have regard to all material considerations, to weigh them up and to take a decision based upon them.

107. Miss Alice Robinson, for the Council, submits that the expression "[i]n dealing with", in s.70(2), should not be restricted to consideration of the application in question by the relevant committee. Rather, she submits, it embraces the totality of what the planning authority says and does, in so far as it is relevant to the application in question in the sense that it has a direct bearing upon it.

108. On the facts, Miss Robinson supports the judge's conclusion that the Council had regard to all material considerations in relation to the 1995 application, despite the fact that there was no specific reconsideration of the 1995 resolution. She points out that for over ten years prior to the grant of planning permission the Home Farm site had been considered suitable for the provision of a substantial quantity of housing, and that the fact that the 1995 application provided for the construction of a complete bypass at the developer's cost was plainly considered by the Council to be a considerable attraction. She also points out that the merits of the proposed development at Longstanton continued to

be debated by the Council in the context of the Local Plan Review. She further points out that the Council was informed on a quarterly basis that the 1995 application remained outstanding, and that in 2000 the 1995 application was twice considered specifically by the Council in the context of the negotiations concerning the maintenance of the public open space.

109. As to affordable housing, Miss Robinson reminds us that in the course of the Local Plan process the Council considered and assessed objections that the Plan made inadequate provision for affordable housing, and concluded that in relation to any new planning application it would be appropriate to consider whether provision for affordable housing should be made; and that the Plan was amended accordingly.

110. As to housing allocation policy, Miss Robinson relies on the Study (to which I referred earlier), which specifically considered the Longstanton allocation (which, in turn, reflected the 1995 resolution), and concluded that it should not be changed. The Study was considered by the Council in the context of formulating the Council's position in the forthcoming Local Plan Inquiry, and the Council accepted its recommendations.

111. As to density, Miss Robinson points out that (as with the policy on housing allocations) the guidance on density provided by PPG 3 was considered in the Study, and that, once again, the Council accepted its officer's recommendations based on the Study, to the effect that unless local circumstances dictate otherwise the notional average housing density for allocated sites be increased from 25 to 30 dwellings per hectare. Local circumstances, for this purpose, included the fact that at Longstanton a maximum number of dwellings had been specified within the agreed line of the proposed bypass, that outline planning permission had been agreed in principle, and that the lengthy negotiations on the terms of a s.106 agreement were close to finality. Miss Robinson also points out that in any event matters of density were reserved by the 1995 resolution.

112. As to Oakington Barracks, Miss Robinson points out that objections based on the prospective availability of the Oakington Barracks site were considered by the Council in the context of the Longstanton allocation, but that the Council considered that the allocation should remain unchanged.

113. As to delay, Miss Robinson submits that relief should in any event be refused on grounds of discretion on the ground that the appellant delayed unduly before bringing the proceedings. She submits that it should have been clear to the appellant well before October 16, 2000 that the Council was proposing to issue a decision notice granting planning permission pursuant to the 1995 resolution without a specific reference back to the Council to reconsider the 1995 application in the light of the five matters on which the appellant relies. She submits that had the appellant sought legal advice and drawn the Council's attention at the proper time to the material considerations to which the Council allegedly failed to have regard, the Council would have had the opportunity to correct the alleged defect by specifically reconsidering the 1995 application in the light of those considerations. In the event, her failure to do so has, she submits, caused the Council unnecessary expense and delay. She further submits that if the planning permission is quashed there will be further delay in the provision of much needed housing and of the Longstanton bypass.

114. For the interested parties, Mr Richard Drabble Q.C. essentially adopts Miss Robinson's submissions on the facts. In summary, he submits as follows:

1. In relation to PPG 3, he submits that the fact that the Home Farm site was not included in the list of sites where changes to the Local Plan were proposed is plainly indicative of the fact that

 © SWEET & MAXWELL AND CONTRIBUTORS

the Council had considered the Home Farm site in the context of PPG 3 and was of the view that there should be no changes in relation to that site.

2. As to Oakington Barracks, he submits that the position is substantially the same. The site at Oakington Barracks was not yet available for housing, and the prospect of its becoming available at some time in the future was not considered to be a factor of sufficient weight to justify any change in the Council's thinking so far as the Home Farm site was concerned.
3. As to density, he reminds us that this was in any event a reserved matter.
4. As to affordable housing, he submits that the evidence establishes that the Council had regard to the two Government Circulars when considering the Local Plan, and that in so doing the Council addressed the question whether to require a provision for affordable housing as a condition of allowing the 1995 application but decided not to do so.
5. As to prematurity, he submits that had the Oakington Barracks site been available in the near future as a viable alternative site a prematurity objection might have some force, but on the evidence the Oakington Barracks site was not expected to become available for some time. Hence it was, as he put it, kicked into touch. He further points out that prematurity is relied on by the appellant as a reason for refusing planning permission; it is not contended that the Council should have merely adjourned further consideration of the 1995 application to enable it to wait and see how matters turned out.

115. As to s.70(2), Mr Drabble submits (as he submitted unsuccessfully to the judge: see para.71 of the judgment, quoted earlier) that where there has been a material change of circumstances between the resolution and the issue of the decision notice consequent upon the resolution the relevant question is whether the officer with authority to issue the decision notice remains entitled to act on the resolution, and that he will remain entitled so to act provided that there has not been a change of circumstances "of a kind that means the committee should be invited to form a fresh judgment" (I quote from para.12 of Mr Drabble's skeleton argument, on which he based his oral submissions). Paragraph 12 of the skeleton argument continues:

> "He is not obliged to go back to committee if his mandate remains good, as it will if the changes are small or if the original resolution remains consistent with the policy views of the council, albeit expressed in a different context. If it is clear that the council as a whole (including the officers holding delegated powers) are alive to the various changes of circumstances, the council will have regard to all material considerations at the date of issue; express reconsideration by the original committee is not necessary."

116. As to discretion, Mr Drabble adopts the submissions of Miss Robinson as to delay. He submits that the delay has caused prejudice to the interested parties in that Mr Stroude has refrained from investment in Home Farm and its buildings in the expectation that permission would in due course be granted pursuant to the 1995 resolution; that Beazer has required a full archaeological survey to be carried out on the site, which interfered with drainage and soil quality; that stocks of grain have had to be disposed of, thereby seriously constraining his agricultural operations; and that Beazer has incurred substantial expense amounting to approximately £500,000 in commissioning studies and appointing a number of consultants and advisers.

117. Mr Drabble also makes the further submission (accepted by the judge, in the context of affordable housing: see paragraph 109 of the judgment, quoted earlier) that the appellant lacks standing in relation to the proceedings, since she has taken objections to the planning permission on grounds which are in themselves of no real concern to her. Mr Drabble submits that the appellant is a "mere meddler" (see *R v Somerset County Council Ex p. Dixon* [1997] J.P.L. 1030 at 1037 at 1037).

Conclusions

118. I begin by considering the nature and extent of a planning authority's duty under s.70(2) of the 1990 Act.

119. Section 70(2) requires a planning authority, in "dealing with" an application, to "have regard" (among other things) to all "material considerations".

"dealing with"

120. In the context of the activities of a planning authority in relation to a planning application, I find it hard to think of an expression which has a wider or more general meaning than the expression "[i]n dealing with". In my judgment, "dealing with" in the context of s.70(2) includes anything done by or on behalf of the planning authority which bears in any way, and whether directly or indirectly, on the application in question. Thus it extends beyond "considering", so as to include administrative acts done by the authority's delegated officers. Nor, in my judgment, is the expression "dealing with" to be limited to the particular acts of the authority in granting or refusing permission under s.70(1). I would regard such a construction as an unjustifiable limitation on the natural meaning of the words. In temporal terms, the first act of a planning authority in "dealing with" an application will be its receipt of the application; and its final act will normally be the issue of the decision notice (certainly that is the position in the instant case).

"material considerations"

121. In my judgment a consideration is "material", in this context, if it is relevant to the question whether the application should be granted or refused; that is to say if it is a factor which, when placed in the decision-maker's scales, would tip the balance to some extent, one way or the other. In other words, it must be a factor which has some weight in the decision-making process, although plainly it may not be determinative. The test must, of course, be an objective one in the sense that the choice of material considerations must be a rational one, and the considerations chosen must be rationally related to land use issues.

"have regard to"

122. In my judgment, an authority's duty to "have regard to" material considerations is not to be elevated into a formal requirement that in every case where a new material consideration arises after the passing of a resolution (in principle) to grant planning permission but before the issue of the decision notice there has to be a specific referral of the application back to committee. In my judgment the duty is discharged if, as at the date at which the decision notice is issued, the authority has considered all material considerations affecting the application, and has done so with the application in mind—albeit that the application was not specifically placed before it for reconsideration.

123. The matter cannot be left there, however, since it is necessary to consider what is the position where a material consideration arises for the first time immediately before the delegated officer signs the decision notice.

124. At one extreme, it cannot be a sensible interpretation of s.70(2) to conclude that an authority is in breach of duty in failing to have regard to a material consideration the existence of which it (or its officers) did not discover or anticipate, *and could not reasonably have discovered or anticipated*, prior to the issue of the decision notice. So there has to be some practical flexibility in excluding from the duty material considerations to which the authority did not *and could* not have regard prior to the issue of the decision notice.

 © SWEET & MAXWELL AND CONTRIBUTORS

125. On the other hand, where the delegated officer who is about to sign the decision notice becomes aware (or ought reasonably to have become aware) of a new material consideration, s.70(2) requires that the authority have regard to that consideration before finally determining the application. In such a situation, therefore, the authority of the delegated officer must be such as to require him to refer the matter back to committee for reconsideration in the light of the new consideration. If he fails to do so, the authority will be in breach of its statutory duty.

126. In practical terms, therefore, where since the passing of the resolution some new factor has arisen of which the delegated officer is aware, and which might rationally be regarded as a "material consideration" for the purposes of s.70(2), it must be a counsel of prudence for the delegated officer to err on the side of caution and refer the application back to the authority for specific reconsideration in the light of that new factor. In such circumstances the delegated officer can only safely proceed to issue the decision notice if he is satisfied (a) that the authority is aware of the new factor, (b) that it has considered it with the application in mind, and (c) that on a reconsideration the authority *would* reach (not *might* reach) the same decision.

127. In substance, therefore, I accept the submission made by Mr Drabble in para.12 of his skeleton argument (quoted in para.115 above), but with the proviso (which may in any event be implicit in his formulation of the statutory duty) that the test of a "material consideration" is an objective one in the sense explained in para.121 above. It is not for the delegated officer to decide what is a material consideration within the meaning of s.70(2). Hence it is no defence to a claim that an authority has breached its s.70(2) duty for the authority to assert that in issuing the decision notice the delegated officer did not consider the consideration to be "material". Accordingly, I respectfully agree with the judge's observation (in para.71 of the judgment) that "[t]he delegation of the consideration of new material considerations is no answer to the . . . claim".

128. Having identified the nature and extent of the Council's duty under s.70(2), I now turn to the facts of the instant case in order to determine whether, on those facts, the duty was discharged.

129. In my judgment the lengthy recital of the planning history which I set out earlier in this judgment admits of only one answer to that question. It seems to me plain on the facts that not only was the Council fully aware of the five new factors on which the appellant relies, but it considered them (had regard to them) with the 1995 application specifically in mind, in that the 1995 application was one (and a prominent one) of a number of matters which together set the context in which the new factors were considered and assessed. In the light of the decisions which the Council took, and the policies it adopted, it is entirely clear, in my judgment, that had the planning officer taken it upon himself to refer the 1995 application back to committee for reconsideration immediately before issuing the planning permission, the Council's decision would have been the same. Indeed, it goes further than that, in my judgment. Given the very considerable period which had elapsed since the passing of the 1995 resolution, and the understandable concern of members at the continuing delay in negotiating the terms of a s.106 agreement, the inference which I draw is that it would have come as a considerable and unwelcome surprise to members had they been told at the beginning of October 2000 that although the s.106 agreement was finally in place it was nevertheless necessary for them specifically to reconsider the 1995 application before a decision notice could be issued pursuant to the 1995 resolution.

130. Accordingly I consider that the judge was right to conclude (in para.88 of his judgment) that in granting planning permission pursuant to the 1995 resolution the Council discharged its duty under s.70(2).

131. In the light of that conclusion, the issue of discretion does not strictly arise. As to that, I would only

say that had I concluded that relief ought otherwise to be granted to the appellant, I would have concluded that there were no good grounds for refusing relief as a matter of discretion. In particular, the suggestion that the appellant should have warned the Council before it issued the decision notice that it was acting unlawfully seems to me to be fanciful.

132. That leaves the issue of standing. As to that, it seems to me that there is an important distinction to be drawn between, on the one hand, a person who brings proceedings having no real or genuine interest in obtaining the relief sought, and on the other hand a person who, whilst legitimately and perhaps passionately interested in obtaining the relief sought, relies as grounds for seeking that relief on matters in which he has no personal interest.

133. I cannot see how it can be just to debar a litigant who has a real and genuine interest in obtaining the relief which he seeks from relying, in support of his claim for that relief, on grounds (which may be good grounds) in which he has no personal interest.

134. It seems to me that a litigant who has a real and genuine interest in challenging an administrative decision must be entitled to present his challenge on all available grounds. Nor do I read the judgment of Sedley J. (as he then was) in *Ex p. Dixon* as casting doubt on that proposition. Similarly, Lord Donaldson M.R.'s reference (in *R v Monopolies and Mergers Commission Ex p. Argyll Group plc* [1986] 1 W.L.R. 763 at 773) to "the applicant's interest" is, as I read it, a reference to the applicant's interest in obtaining the relief sought: in this case, the quashing of the planning permission.

135. Accordingly, I would respectfully disagree with the judge's conclusion (in para.109 of the judgment) that the appellant be debarred from relying on the argument based on affordable housing.

136. In so far as Mr Drabble submitted that the appellant has no standing to bring the proceedings at all, I have no hesitation in rejecting that submission. The appellant has lived in Longstanton for upwards of 30 years. She plainly has a real and genuine interest in seeking to prevent the substantial development permitted by the planning permission.

137. However, for the reasons I have given I would dismiss this appeal.

Comment. See J.P.L. January, page 1, Current Topics.

R (on the application of Rank) v East Cambridgeshire District Council (Queen's Bench Division, Mr George Bartlett sitting as a Deputy High Court Judge, October 8, 2002)[3].

Previous refusal of planning permission in respect of the site—material considerations—European Convention on Human rights—consideration of Convention rights of the claimant—Article 8—Article 1 of the First Protocol

Planning permission was granted for the demolition of an existing bungalow on the land and the erection of two houses and garages. The claimant lived immediately to the north of the site. In 1988 an application had been made for outline planning permission for a bungalow on the rear part of the site. East Cambridgeshire District Council (the Council) refused permission on the grounds that the density of the development was out of keeping with the character of existing residential development in the vicinity, that it would spoil the character of the area, that it would represent overdevelopment and that the loss of amenity to the property would be too great. The applicant appealed against this refusal. His appeal was determined by an Inspector appointed by the Secretary of State. In his decision the Inspector stated that he considered that the main issue was whether the proposal would result in a cramped development out of keeping with its surroundings. He concluded that, in conjunction with the existing bungalow, the proposed development would be cramped and out of keeping with its surroundings in such a rural area.

[3] *G. Jones* (Richard Buxton Solicitors), *H. Townsend* (East Cambridgeshire District Council Legal and Democratic Services).

 © SWEET & MAXWELL AND CONTRIBUTORS