Agenda Item No. 7

South Ayrshire Council
Report by Chief Governance Officer
to South Ayrshire Council
26 March 2026

Subject: Decision in favour of the Council in the Judicial Review by the Petitioner Allanvale Homes (Prestwick) Limited

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1. Purpose

1.1 The purpose of this report is to advise Members of the decision by Court of Session in favour of the Council in the judicial review which had been raised against the Council by Allanvale Homes Limited against the council decision not to approve in principle the provision to them of £21.41 million of funding in relation to the development of the land at Corton and to seek member approval to seek the expenses of the action.

2. Recommendation

2.1 It is recommended that the Council

2.1.1 notes the decision in favour of the Council in the petition for judicial review by Allanvale Homes (Prestwick) Limited against the Council as set out in Appendix 1; and

2.1.2 notes that the Council will seek the expenses of the action from Allanvale Homes (Prestwick) Limited.

3. Background

3.1 A report was presented to Council on 12 December 2024 to advise the Council of the financial, legal and procurement implications arising from the request by Allanvale (Prestwick) Homes Ltd ("the Developer") for funding from the Council for Corton, Ayr related to their planning applications 23/00261/FURM and 23/00345/APP. Council was being asked if it approved in principle providing funding of £21.41m to the Corton Landowner, and if so to authorise officers to negotiate terms with the Developer. This report focused on the principle of the Developer's proposal rather than detailed terms, which if approved would have had to be negotiated by officers.

3.2 The report is an exempt report available to members as a background paper. The decision by Council was to refuse the applications for the reasons stated in the report. A link to the Council decision can be found here MSAC121224.pdf

3.3 A petition for judicial review was served on the Council by the Developer on 27 February 2026seeking the reduction of this Council decision of 12 December 2024 and stating that the decision was unlawful for the following reasons:

(a) all relevant material was not provided to the councillors responsible for making the decision.

(b) an irrelevant matter was considered by councillors, namely councillors were informed that the provision of a financial contribution to the petitioner would, in all circumstances, be an unlawful subsidy for the purposes of the Subsidy Control Act 2022;

(c) the provision of a financial contribution by the respondent to the petitioner would not risk being an unlawful subsidy for the purposes of the Subsidy Control Act 2022 as it would serve the public interest to create the public infrastructure necessary to unlock the development potential of the whole site.

(d) the provision of a financial contribution by the respondent to the petitioner would not risk a breach of Regulation 14 of the Public Contracts (Scotland) Regulations 2015; and

(e) the respondent did not undertake a lawful assessment of whether the provision of a financial contribution to the petitioner would provide best value for the purposes of section 1 of the Local Government in Scotland Act 2003.

3.4 Officers instructed external legal advisors Brodies and a KC to represent them and oppose the granting of the petition.

4. Detail

4.1 The judicial review was heard at the Court of Session on 9 and 11 September 2025. On 10 March 2025 the judge delivered his opinion. The opinion can be read on the Court website : 2026csoh25-petition-of-allanvale-homes-prestwick-for-judicial-review.pdf and is attached as Appendix 1(“the Opinion”).

4.2 The judge decided it was a suitable decision for judicial review and upheld the Council arguments on all accounts rejecting those put forward by the Developers.

4.3 The following key points from the Opinion provide important guidance for officers and members for the drafting and consideration of reports and for members on how they should perform their decision-making duties. The key points are summarised below under the headings used in the Opinion for ease of reference.

Failure to provide relevant information to councillors

The Developers argued that not all Councillors had received the opinions. In response to this point the judge found that

“*Whether or not individual councillors received the opinion was and is irrelevant – they had the report. Moreover, they [(the two councillors advising they had not received opinions) knew the opinions existed and could have requested them if they wanted. It was not necessary that they be included in the papers given to Councillors.”*

If Councillors have requested information and consider they have not been given it, they should raise this issue before a vote is taken on the decision.

Report did not accurately reflect the advice

The report provided a fair and accurate summary of the legal advice that had been received from Lord Wolffe KC and from the external advisors Brodies.

The Subsidy Control Act 2022

The Council was entitled to instruct an opinion of counsel that set the bar for the risk that the Council was willing to accept where it did. There clearly was the potential for this to constitute a subsidy.

"*The report is very clear that it is applying a precautionary approach. It notes the council did not have funds to make the payment sought so would have to borrow them, and that the lawfulness of the payment would be critical to whether there was an entitlement to borrow. In that situation it was entirely understandable that the report would take a cautious approach. It was no doubt for this reason that the question to counsel was framed in the terms it was.*"

The Public Contracts (Scotland) Regulations 2015

The report stated: -

(iii) the provision of grant funding to the Landowner to procure infrastructure works at Corton without ensuring that the Applicant appointed a contractor following a regulated procurement procedure may place the Council in breach of its duty under regulation of the Public Contracts (Scotland) Regulations 2015.

The Judge agreed the Council's statement was correct. In other words, "*if there is no regulated procedure it **may** – rather than will place them in breach of the duties imposed by the Regulations."* [Chief Governance Officer has added the word in bold]

Obligation to secure best value

The advice in the report concerning the best value duty was accurate and sufficiently thorough. He also noted that the duty to make arrangements to secure best value imposed by the 2003 Act means that it was appropriate for the council to consider the issue as part of their decision – even at the preliminary stage.

Reasons

As the council were concerned with risk, there was no need to provide reasoning for rejecting what had been said by the Developer.

"*As the council note, this was not a situation in which there was a dispute on which the council had to make a determination. **It was decision as to how the council would apply its resources***." [Chief Governance Officer has added the words in bold]

4.4 Members are therefore now asked to note the decision and that the Chief Governance Officer will instruct the external legal advisors to seek the expenses of the action from the Developers.

5. Legal and Procurement Implications

5.1 The Council is seeking recovery of its expenses and a motion seeking these will call at the Court of Session. The Petitioner has 21 days to reclaim, and this period expires on 31 March 2026..

5.2 There are no procurement implications arising from this report.

6. Financial Implications

6.1 The Council has been billed £101,051.20 for external legal costs in relation to the judicial review which includes the cost of Counsel and court fees. It covers the cost of an additional court hearing where the Developer had sought to introduce additional pleadings. This was refused by the court. The Council will seek to recover its judicial expenses from the Developer.

7. Human Resources Implications

7.1 Not applicable.

8. Risk

8.1 ***Risk Implications of Adopting the Recommendations***

8.1.1 There are no risks associated with adopting the recommendations.

8.2 ***Risk Implications of Rejecting the Recommendations***

8.2.1 Rejecting the recommendations could result in reputational damage to the Council.

9. Integrated Impact Assessment (incorporating Equalities)

9.1 The proposals in this report do not require to be assessed through an Integrated Impact Assessment.

10. Sustainable Development Implications

10.1 ***Considering Strategic Environmental Assessment (SEA)*** - This report does not propose or seek approval for a plan, policy, programme or strategy or document otherwise described which could be considered to constitute a plan, programme, policy or strategy.

11. Options Appraisal

11.1 An options appraisal has not been carried out in relation to the subject matter of this report.

12. Link to Council Plan

12.1 The matters referred to in this report contribute to Priority 4 of the Council Plan: Efficient and effective enabling services.

13. Link to Shaping Our Future Council Yes ☐ No ☐

13.1 Not applicable.

14. Results of Consultation

14.1 There has been no public consultation on the contents of this report.

14.2 Consultation has taken place with Councillor Brian Connolly, Council Leader and Policy Lead for Economy and Strategy, and the contents of this report reflect any feedback provided.

15. Next Steps for Decision Tracking

15.1 The Chief Governance Officer will ensure that all necessary steps are taken to ensure full implementation of the decision within the following timescales, with the completion status reported to the Cabinet in the 'Council and Cabinet Decision Log' at each of its meetings until such time as the decision is fully implemented:

Implementation	*Due date*	*Managed by*
Seek recovery of the judicial review expenses or in the event of a reclaiming action take appropriate steps to preserve the Council's position.	June 26	Catriona Caves – Chief Governance Officer

Background Papers MSAC121224.pdf

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Date: 17 March 2026

OUTER HOUSE, COURT OF SESSION

[2026] CSOH 25

P209/25

OPINION OF LORD LAKE

in Petition of

ALLANVALE HOMES (PRESTWICK)

Petitioner

for

Judicial Review

Petitioner: MacGregor KC, Blair; Shepherd and Wedderburn LLP
Respondent: Crawford KC; Brodies LLP

10 March 2026

Introduction

[1] The petition concerns an area of land in Ayrshire owned by the petitioner and known as Corton. It forms part of an area known as the South-East Ayr Strategic Expansion Area. At a meeting of the councillors making up the respondent on 12 December 2024, a decision was made not to approve in principle the provision to the petitioners of £21.41 million of funding as requested by them in relation to development of the land at Corton. The petitioners contended that the funding was necessary to make development economically viable. The refusal to provide funding was expressly said to be for the reasons detailed in the report which had been submitted to the council for the meeting. In addition, the minute of the meeting noted four outline reasons for the decision:

(i) that there was a significant risk that the provision of funding would be unlawful as being prohibited by section 12(1)(b) of the Subsidy Control Act 2022,

(ii) that provision of funding was not consistent with the duty placed on the council by the Local Government in Scotland Act 2003 to secure best value,

(iii) that the provision of funding without ensuring that the applicant appointed a contractor only after a regulated procurement procedure might place the council in breach of its duties under the Public Contracts (Scotland) Regulations 2015, Regulation 14, and

(iv) that the provision of funding to purchase land at the values requested by the applicant would breach the council's acquisition and disposals policy and the valuation of land at the levels sought did not represent best value.

All but one of the councillors voted in favour of the motion not to approve in principle the funding. The one who did not vote in favour abstained. The petitioners seek reduction of this decision.

[2] The land at Corton has been the subject of earlier planning permissions for mixed use development and the South-East Ayr Strategic Expansion Area is allocated for development in the Local Development Plan adopted by the council in 2022. This plan anticipates that a new primary school will be required following residential development and requires the safeguarding of land for a park and ride facility. In 2023 the petitioner made a further application for planning permission in respect of Corton and, in 2024, the respondent decided they were minded to grant planning permission and planning permission in principle for a mixed-use development. As is common for developments of the scale proposed, the expression of willingness to grant planning permission was made subject to

agreement being reached between the council and the petitioner as to conditions that would be incorporated into the permission and the terms of agreement under the Town and Country Planning (Scotland) Act 1998, section 75, in terms of which the petitioners would contribute to the costs of infrastructure required as a consequence of the development.

[3] The negotiations undertaken in respect of the section 75 agreement were wider than just the scope of the agreement itself. In the course of them, the petitioner provided draft Heads of Terms to the council which contained proposals for the council to undertake actions and make payments which would fund infrastructure works. The first element of the draft entailed payment of £8,792,555 to the petitioner by the council as consideration for the transfer of land for a primary school, a neighbourhood park and a park and ride site. The second element was payment by the council to the petitioner of a sum of £12,626,920 which was described in the report to the councillors considered below "as a contribution towards the Applicant's anticipated costs of £18.42m for the provision of what the Applicant describes as 'Common Infrastructure'". The infrastructure works included provision of a new roundabout on the A77 giving access into the Corton site, provision of an access road to the primary school, provision of an equestrian bridge over the A77 and payment of fees of £3.34 million. The intention of the petitioner in preparing these draft Heads of Terms was that payments made and sums provided by the council would be recouped during the course of future developments of the South-East Ayr Strategic Expansion Area and, to that end, section 75 agreements would be entered into between the council and the developers in future to bring this about.

[4] Ahead of the council meeting on 12 December 2024 which was to consider in principle the council making available the funding sought, the Council Director of Housing, Operations and Development prepared a report dated 5 December 2024. This examined

issues that arose from the petitioner's application for funding and recommended that the council should not approve provision to the petitioner of £21.41 million. The report itself ran to 17 pages. Within the body of the report, there is an indication that there are 12 appendices which relate to work carried out on the proposal. This includes the following entry:

> "Appendix 9 – Kings Counsel Opinion:
> i) Opinion dated 20 June 2024;
> ii) Opinion dated 22 November 2024"

The appendices run to 290 pages although one of the arguments made by the petitioner is that some appendices - and in particular the opinions of counsel - were not provided to the members. The council decided to refuse the application in accordance with the recommendations of the report and, as noted above, the decision stated expressly that it was for the reasons set out in the report. This means that although *North Lanarkshire Bio Power Ltd* v *Scottish Ministers* [2021] CSIH 47 says that where a decision has been taken in accordance with recommendations in a report, the contents of the report will be taken to provide the reasons, in the present case no legal presumption is required as it is expressly stated in the decision.

Grounds of challenge

[5] In Statement 4, the petition states the following bases for the contention that the decision was unlawful:

(a) all relevant material was not provided to the councillors responsible for making the decision;

(b) an irrelevant matter was considered by councillors, namely councillors were informed that the provision of a financial contribution to the petitioner would,

in all circumstances, be an unlawful subsidy for the purposes of the Subsidy Control Act 2022;

(c) the provision of a financial contribution by the respondent to the petitioner would not risk being an unlawful subsidy for the purposes of the Subsidy Control Act 2022 as it would serve the public interest to create the public infrastructure necessary to unlock the development potential of the whole site;

(d) the provision of a financial contribution by the respondent to the petitioner would not risk a breach of Regulation 14 of the Public Contracts (Scotland) Regulations 2015; and

(e) the respondent did not undertake a lawful assessment of whether the provision of a financial contribution to the petitioner would provide best value for the purposes of section 1 of the Local Government in Scotland Act 2003.

Most of these points are subdivided thereafter resulting in many different legal bases of challenge. The respondents dispute that the decision was unlawful. In addition, they submitted that this was not a situation in which the supervisory jurisdiction of the court was engaged. It makes sense to address that issue first.

Applicability of the supervisory jurisdiction of the Court of Session

[6] The petitioner contends that the council's decision is subject to review by the court. In support of that position, it was argued that the need for the tripartite test identified in *West* v *Secretary of State for Scotland* 1992 SC 385 is not absolute. In this regard I was referred to *Wightman* v *Secretary of State for Exiting the European Union* 2019 SC 111, *The State of Mauritius* v *The (Mauritius) CT Power Ltd* [2019] UKPC 27, *Abundance Investment Ltd* v *Scottish Ministers* 2020 SLT 163 and *Redcroft Care Homes Ltd* v *City of Edinburgh Council* 2025 SC 103.

Some emphasis was placed on the comments of Lord Drummond Young in *Wightman* which were repeated by Lord Clark in *Abundance* in a passage later approved by the Inner House in *Redcroft.*

[7] The petition identifies legislation and orders which it is said may have constrained the exercise of powers by the respondent (the Local Government in Scotland Act 2003, the Public Contracts (Scotland) Regulations 2015 and the respondent's Scheme of Delegation) and on that basis it was submitted that the decision was a matter of public law and, as such, was subject to judicial review. However, despite identifying these controls on the exercise of decision-making powers, the petition does not identify the source of the power to make payments to assist in bringing about development of land. The minute of the meeting makes no reference to the basis on which the application was made or what power they were being invited to exercise. The basis of the decision is not identified in the petitioner's Note of Arguments. However, in the course of submissions at the hearing, for the first time, it was contended that it can be viewed as a decision made under the Local Government in Scotland Act 2003, section 20. That section gives a local authority a power to do anything which it considers is likely to promote or improve the well-being of the area and/or the persons within that area. This can include giving financial assistance to any person to bring this about.

[8] The respondents contend that it is not possible for the court to review the decision in exercise of its supervisory jurisdiction. They contend that the opinions expressed in *Abundance* and *Redcroft* require that there is focus on the particular decision and the particular exercise of delegated power to decide whether judicial review is available. They pose the question of what area of judgement have the council embarked upon and submit that there was no obligation on them to provide funding. They contend that it is an attempt

to review a decision by the council not to enter into a commercial arrangement. They accept that the council had the power under section 20 of the 2003 Act but note that the decision did not identify that that was what was in mind.

[9] The late reliance by the petitioner on section 20 is critical to this issue. Although the decisions in *Wightman*, *Abundance* and *Redcroft Care Homes* have developed what was said in *West*, they have not overruled it and that decision therefore remains binding on me. In *West*, after a detailed review of the various authorities, Lord Hope said that the supervisory jurisdiction of the court gave it the power:

> "to regulate the process by which decisions are taken by any person or body to whom a jurisdiction, power or authority has been delegated or entrusted by statute, agreement or any other instrument." (page 412-413)

He noted that the purpose of the jurisdiction was to ensure that the decision-maker does not exceed or abuse his powers or fail to perform a duty. In *Wightman*, Lord Drummond Young expressed the matter more broadly and stated that the purpose of judicial review was to ensure that all actions of public authorities are carried out in accordance with the law and that the scope of the supervisory jurisdiction must be determined by that purpose. However, the opinions of the other members of the court (Lord President (Carloway) and Lord Menzies) did not proceed on that basis and it cannot be said that these comments formed the basis of the decision. In Lord Clark's opinion in *Abundance*, the answer to the issue of whether review is available turns on consideration of the act or decision and the basis of that act or decision (para [42]). Lord Clark noted also that if the decision was taken under a statutory power or in implement of a statutory duty it might have the effect of opening it up to judicial review (para [46]). These passages from Lord Clark's opinion were what was approved by the Inner House in *Redcroft.* They are consistent with the rationale expressed in *West*.

[10] On the basis of the petitioner's submissions as they were developed at the hearing, it is now apparent that the test in *West* is satisfied. Section 20 of the 2003 Act confers a discretion on the council as to whether it will make funding available. The test that the council must apply in exercising that discretion is whether doing so will promote well-being. That concept might normally be thought of as referring to issues of health and happiness such that it seems incongruous to apply it to a geographical area rather than people. However, it is apparent from section 22(13) of the Act that the actions permitted by section 20 include ones to promote the economic development of an area. So, while it might seem odd to describe provision of funding as improving the well-being of a place, that is the nature of the decision contemplated in the 2003 Act. Proceeding on the basis it was under that section that the council were acting, the issue is whether the decision not to exercise the power has been taken lawfully. That decision is one to which the supervisory jurisdiction as described in *West* applies. Because it does fall within the tripartite jurisdiction described there, it is not necessary to consider whether there is some alternative basis on which the court may exercise powers of review. For completeness, I should add that I place little weight on *The State of Mauritius* v *The (Mauritius) CT Power Ltd* [2019] UKPC 27 in this regard as it was not decided under Scots law and is therefore not directly of relevance to the scope of the supervisory jurisdiction of the Court of Session.

Failure to provide relevant information to councillors

[11] While the broad heading referred to in the petition seeks a finding that the decision was unlawful because "all relevant material was not provided to the councillors responsible for making the decision", the averments made and submissions advanced at the hearing refer to the following inter-related grounds in this regard:

(a) Two opinions that had been obtained from senior counsel were not included in the papers sent to councillors and this means that the statement in the minute that the council had "carefully considered" the documents was wrong. It was claimed that this error of fact vitiated the decision.

(b) The failure to include the opinions had the result that the councillors failed to have regard to a material consideration (ie the opinions) in making the decision and this vitiated the decision

(c) The opinions, if they were provided, were not in fact carefully considered in that at least the leader of the council, Councillor Dowey, had not considered them prior to the meeting. This was said to mean that the minute of the meeting was inaccurate and that, again, there was a failure to have regard to a material consideration.

(d) The report did not fairly represent the advice that had been tendered in the opinions from senior counsel. It is contended that the summary it gave was not fair and accurate and failed to represent the whole of the advice that had been tendered. It is claimed that this had the effect that a relevant issue in relation to whether the payment would be a subsidy was not considered.

There was some overlap between these arguments and some arguments appeared in relation to more than one ground. Nonetheless, I will address them each in turn.

Papers for councillors did not include senior counsel's opinion

[12] At the stage of considering the application, the council obtained an opinion of the Rt Hon James Wolffe KC on the question of whether, if the council made the payment sought, it could amount to a breach of the Subsidy Act 2022. The council disclosed this

opinion to the petitioners who had some concerns regarding it. In light of those concerns, the council obtained a second opinion from Mr Wolffe. This was not disclosed to the petitioners prior to the council meeting. The petitioner alleges that some of the councillors who attended and voted on the motion had not received copies of the opinions. The petition states that the petitioners are not able to state what was available or to whom but seek a proof before answer to establish what was provided to councillors.

[13] Both parties have lodged affidavits concerning the issue of distribution of the report and appendices for the meeting. The petitioners provided affidavits from Councillors Dowey and Kilbride. Both claim that copies of counsel's opinions were not provided in the set of papers that had been printed out for them. It is clear from both affidavits, however, that for some time prior to the meeting, they were aware that the first opinion at least existed.

[14] The council have provided affidavits from Councillors Pollock, Ferry and Hunter and also the council's Chief Governance Officer and Head of Legal and Regulatory Services, Catriona Caves. The councillors confirm that they were provided with electronic versions of the papers which included counsel's opinions. Councillor Pollock states that he worked from a hard copy which was no different from the electronic version and he was not aware of any missing papers. Councillor Hunter states that he prefers to work from hard copies and that he is provided with this by a member of the secretarial staff. He recalls seeing counsel's opinions. Ms Caves set out the procedure whereby emails with the papers are sent out to all councillors in advance of a meeting. She notes that if a councillor requests a hard copy it is prepared for them by member services. She says that no councillor has ever said to her that he or she did not get papers and, specifically, that no such concerns were expressed to her directly or indirectly in relation to the meeting on 12 December. She notes that she

did get an email from Councillor Dowey noting that he has not received a copy of an opinion from Mr Wolffe which he attached to his email but that, on examination, the opinion he attached was from Mr Barrett KC and had been instructed by and received by the petitioners. It had not formed part of the papers which were to be distributed to councillors. Ms Cave states that the hard copies provided by secretarial staff are a printout of the electronic version attached to the emails sent out. She notes that if there had been an error and the latter part of the papers was not printed off, it would have meant that the councillors affected, including Councillor Dowey, would not have received papers for the item on the agenda which followed the issue of payment to the petitioner. That related to the Burns Statute Square project in Ayr. This issue was discussed at the meeting, and it was Councillor Dowey that had proposed the report in relation to that matter. Neither he nor any other councillor stated that they had not received papers for that item.

[15] Obviously, there is a factual dispute as to what was provided to the councillors. As was submitted by the petitioner, it is not one which I am in a position to resolve on the basis of the pleadings and the conflicting affidavits. The issue before me is therefore whether the outcome of this dispute is material to the disposal of the application for judicial review such that an evidential hearing should be fixed. Having regard to the authorities cited to me, the decision I am required to make does not depend on resolution of the factual dispute and a hearing is therefore not required.

[16] The first issue is whether failure to provide the opinions to councillors is of itself enough to vitiate the decision. As noted above, the report makes it clear that there were two opinions from counsel in relation to the proposal. The report summarises the advice given. The petitioners challenge the accuracy of the summary that is given and that is considered below. For the moment, however, I am considering the challenge based on the claim that

councillors did not have a copy of the opinions and did not therefore have a chance to consider them.

[17] In the course of submissions, the petitioner directed me to *Patton* v *East Renfrewshire Council* [2017] CSOH 158 where, in relation to reports to councillors ahead of a meeting, Lord Glennie said:

> "The purpose of such a Report is to summarise for the benefit of the committee members the material planning guidance, statutory and otherwise, to identify the important issues which they will have to decide, and to summarise the material and arguments on the basis of which their decision has to be made." (para [8])

I was referred also to *Cran* v *Campden London Borough Council* [1995] RTR 346 in which McCulloch J noted that the object of a report is to provide fair objective summaries of the issues on which their decision is required. Although this was in the context of considering the accuracy of the content of the report (which is examined below), it is relevant also to the issue of whether there was a requirement to send out a copy of the legal advice itself to each councillor. The authorities note that there is often a substantial volume of business to be considered at council meetings. The complexity of the issues that can arise in relation to those issues is known to the courts from the cases that arise. The requirement for reports to provide summaries of the issues and considerations is precisely because it would not be practicable, having regard to the volume of business that must be considered at council meetings and all the documents that will be relevant, to put them all before the councillors. It is therefore not surprising that I was referred to no authority to suggest that there was a duty to place all source materials before the councillors. All that is required is that a summary of the material is provided and that is what the council officers sought to do in the report.

[18] This this position is strengthened where, as here, the councillors have been made aware that a document forming the source material exists even if they have not been given a copy. It would be open to any councillor who wished to consider the matter in more detail to request a copy of the document. If they had done so and considered that their request was not met, it would be for them to raise this before the vote. They might insist on getting the document or information in question and / or might seek to have consideration of the issue put off to another meeting in future. Taking that action would be consistent with securing the proper conduct of council business and making decisions which can be relied upon by the public. If a councillor who was aware of a document and wanted to see it but had not been given an opportunity, is able simply to vote in favour of a proposal without raising concerns and later claim the vote is invalid, it is apparent that the efficient and proper disposal of council business would be adversely affected. It would be necessary to verify that all documents had been provided to all councillors before a decision could fully be relied upon. Although there is a presumption of regularity which would support a conclusion that the documents were received, it is just that - a presumption. It could be overcome by proof to the contrary. Taking the approach that the petitioner urges on me would create a position that would be unworkable.

Report did not accurately reflect the advice

[19] It is apparent from the authorities referred to above that the report has an important function to play to secure that, when taking their decision, the councillors are aware of material considerations and the issues that arise. The petitioners contend that the report fell short of the standard required as it did not provide a fair and accurate summary of the advice the council has received, was not objective, exaggerated risks and did not present all

relevant issues. The council argued that it was adequate for its purposes. The starting point for resolving this issue is to identify from authority what is required of reports to councillors. The parties directed me to *Cran* and *Patton* referred to above and also *R (Hindawi)* v *Secretary of State for Justice* [2011] EWHC 830 (QB), *R (Crematoria Management Ltd)* v *Welwyn Hatfield Borough Council* 2018 EWHC 382 (Admin), [2018] Env LR 26, and *R (JP)* v *NHS Croydon Clinical Commissioning Group* [2020] EWHC 1470 (Admin).

[20] *Patton* was a judicial review of a decision of East Renfrewshire Council to grant planning permission for a housing development. After the passage quoted in para [17] above, Lord Glennie went on to set out a distillation of the position from other cases as to what is required of reports to councillors as follows,

> "In the absence of contrary evidence it is a reasonable inference that members of the planning committee will have followed the reasoning of the Report, at any rate where the recommendation contained in the Report is adopted. For this reason a Report of this kind has to be sufficiently clear and full to enable councillors to understand the important issues and the material considerations that bear upon them and decide those issues within the limits of planning judgment that the law allows them. But this does not mean that the Report has to cover every point in great detail. It should be focused and concise. If it is too long, too elaborate or too defensive, there is a danger that councillors will not read it or, if they do read it, will not understand it fully. A careful judgment has to be made by the planning officer as to how much detail to include in the Report. The assessment of how much and what information should go into the Report is a matter for the planning officer exercising his own expert judgement and that judgement is entitled to respect. If he gets it wrong to the extent that the Report contains insufficient information to enable the committee to perform its function, or is positively misleading, then a decision taken by the committee on the basis of that Report may be challengeable in the courts. But the court will not lightly interfere. It will not subject the Report to the same critical analysis as might be appropriate to the interpretation of a statute. The Report must be given a fair reading. It must be assumed that it is addressed to a knowledgeable readership, in other words to councillors who, collectively, as a body, are broadly familiar with the relevant statutory tests and other relevant guidance and have some familiarity with the location with which the application is concerned. In addition, it must be borne in mind that any defect in the Report may have been corrected at the meeting of the committee by the planning officer either of his own initiative or in response to questions from members of the committee. An examination of the minutes of the meeting should enable it to be determined whether this has been

> done, failing which evidence from the planning officer may be required." (paragraph 8)

[21] The judgment in *Cran* emphasises a requirement that the report be fair, accurate and objective, but notes that perfection is not required. It notes that it is not enough that an appendix to a report contains the necessary information as it cannot be assumed that the councillors will have the time to "ferret out" such points. *Hindawi* concerned a report to the Secretary of State following a decision of the Parole Board and the court emphasised the requirement for fairness. In that case the report was drafted in a way that did not present the issues fairly and the problem was compounded in that it was prepared by officials who had conducted the case before the Parole Board and had been unsuccessful. The decision in *Crematoria Management* was in the context of a judicial review of a decision to grant planning permission for development of a crematorium. One of the grounds of challenge was that the report contained an error of fact as to the capacity of the applicant's crematorium when considering the issue of whether a need had been demonstrated for the proposal. The court analysed this as the members being advised of a factor to take into account when making their decision that did not exist and therefore that the decision had been made taking into account an irrelevant consideration. This vitiated the decision. In *R(JP)* the concern was with the summary of evidence in a care assessment. That summary referred to the opinion of a specialist nurse but omitted to mention important qualifications expressed by the nurse. On that basis, Mostyn J concluded that, having relied on the summary, the decision took into account irrelevant and inaccurate information and failed to take into account relevant and accurate information (paragraph 26).

[22] Before considering the contents of the report, it is necessary to consider briefly the contents of the opinions obtained by the petitioner. The first opinion notes that the council

had determined that the payments proposed would not be consistent with the subsidy control principles stated in the Subsidy Control Act 2022. This meant that if the payment did amount to a subsidy in terms of the 2022 Act it would be unlawful. That in turn had the consequence that the council would not have the power to borrow to meet the expenditure. It was against that background that the question that had been addressed to counsel was:

> "Can the Council conclude, with a reasonable degree of certainty, that the circumstances outlined would not be capable of giving rise to a subsidy in terms of section 2 of the Subsidy Control Act 2022?"

The instruction made it plain that when considering "a reasonable degree of certainty", the council would not be satisfied unless there was "no real risk". Counsel expressed an unequivocal conclusion that he could not say that there was no real risk that the payment would amount to a subsidy.

[23] Delving into the detail of the opinion a little, it is easiest to start with the proposed land purchase as the position is most straightforward there. The council had put a value of £160,000 on the land to be acquired. That is not challenged in the petition. The proposal was that the land would be acquired for £8.79 million. The opinion says that there is a subsidy when land is purchased for a sum in excess of its market value. In relation to the provision of funding for infrastructure, the position is more complex. Counsel notes that the guidance provided under the Act states:

> "Where the infrastructure is in the form of roads … not intended to be commercially exploited and is made available to the public to use for free, the provision of access to this infrastructure will not be considered to constitute an economic activity and public funding for this infrastructure will not fall within the scope of the Act".

He also notes, however, that even where no fee is charged for use of the infrastructure, if its management and operation confer a specific benefit, it may still be considered a subsidy. He refers to the EU Commission decision SA.36019 – Belgium (Financing of road infrastructure

in the vicinity of a real estate project – Uplace) which had been highlighted by solicitors for the petitioner. This concerned EU State Aid rules. Counsel noted that the Competition Appeal Tribunal had noted that caution was required when reading such decisions across to the controls in the 2022 Act. He considered nonetheless that this showed that the outcome of an assessment of whether a payment was a subsidy was highly fact sensitive. On the one hand, provision of connections from the public road network to a development which were accessible to all for free was not prohibited under the EU State Aid rules. On the other, it was relevant firstly that in the Uplace decision the infrastructure in question was carried out in the public domain outside the borders of the site and, critically, would therefore not benefit one developer exclusively and, secondly, that the works would be built anyway even in the absence of the Uplace project.

[24] In reaching his opinion as to the presence of risk, counsel had regard to the fact that the regime in the 2022 Act was relatively new and that there was little case law to clarify how it would operate. This meant that there were untested issues including whether the petitioners, as assemblers of land for development, were an entity providing goods or services on the market and hence carrying out an economic activity such as to be an enterprise for the purposes of the 2022 Act. Mr Wolffe considered that it was at least possible that the concept of offering services would be construed to include bringing forward of development land for resale. He notes that unlike the position in Uplace, the position here was that there would be no reason for the council to carry out the works if it was not for the development. He expressed the view that, in this situation, the works would directly support the commercial development at Corton and, if the petitioner's activity was to be regarded as "offering goods and services on a market" such that it was an enterprise,

"these circumstances may readily be fitted within the terms of section 2(1)(b) of the 2022 Act, and therefore fall to be treated as a subsidy."

[25] In the supplementary opinion, counsel responds to a slightly reformulated question which is, "whether the Council could 'with a reasonable degree of certainty' take the view that the payments the developer seeks would 'not be capable of giving rise to a subsidy'". The supplementary opinion notes that as a matter of fact the infrastructure works would immediately be to the benefit of the petitioner, that there is not at present any proposal to develop the wider site which would require their construction, and that there is no indication that the council would wish to fund the works in order to facilitate future development of the larger site were it not for the fact that the developer was seeking a contribution. It was relevant also that the developer's proposal was not consistent with council policy in relation to the development of the area as a whole and that the financial contribution would improve the economic viability specifically of the petitioner's proposal. He expressed the view that payment in these circumstances "would invite conclusion that a financial contribution to these works, in reality, on the facts as they are today, provides a specific benefit to the developer". Counsel left open the possibility that if the council took the view that it would serve a public interest of unlocking development to the wider area, the provision of funds could be defended as not being a subsidy. However, having said that, his opinion was that he could not say with a reasonable degree of certainty that if the council were to fund these works it would not be capable of giving rise to a subsidy. He considered that even if the council thought it would serve a wider public interest, the decision would be vulnerable to challenge.

[26] Moving to consider the terms of the report in light of that opinion, it states that the advice is that the council "cannot conclude with a reasonable degree of certainty that the

financial assistance would not give rise to a subsidy" (paragraph 3.6.3). It then sets out the reasons for the conclusion in relation to each element of the infrastructure works. In respect of each it notes that while the works could in principle be used by the public at large, there are no current proposals which would require them and that they could therefore be taken as providing a selective advantage to the petitioner and that this creates "a significant risk that they would constitute a subsidy". It also states that the value of land which in terms of the petitioner's proposals is to be acquired by the council for £8.79 million has been assessed by the council's professional valuers as being £160,000 and that advice to the council is that the acquisition of land at above market value is a subsidy (paragraph 3.6.4). Following on from that, there is a statement that if the members are minded to instruct officers to negotiate with the petitioners, they would have:

> "(1) to conclude, contrary to legal advice, that the Applicant's proposals would not constitute a subsidy, or (2) to conclude that the subsidy would be consistent with the subsidy control principles notwithstanding the assessment undertaken by officers." (paragraph 3.6.7)

There is also a statement that in terms of the advice from counsel and Brodies WS, the solicitors appointed by the council, there is a real risk that the payments for infrastructure will constitute a subsidy as officers have not been able to identify any present purpose other than to enable the development of the applicant's site and that in relation to purchase of land a subsidy will arise if land is purchased for a sum in excess of its market value (paragraph 5.1). Following from those comments, it concludes that: "on advice from Brodies LLP and from senior counsel, the Council cannot conclude with a reasonable degree of certainty that no subsidy arises". (paragraph 5.3)

[27] In my view when the terms of the report are considered as a whole, the summary it gives of the advice from counsel is fair and accurate. The report is very clear that it is

applying a precautionary approach. It notes the council did not have funds to make the payment sought so would have to borrow them, and that the lawfulness of the payment would be critical to whether there was an entitlement to borrow. In that situation it was entirely understandable that the report would take a cautious approach. It was no doubt for this reason that the question to counsel was framed in the terms it was. In relation to the acquisition of land at the prices suggested by the petitioner, on the basis of the values stated in the report, it correctly noted that Mr Wolffe had said that this could be a subsidy. In relation to payment for the infrastructure works, the opinion of counsel, taken as a whole, was that there was a material risk that the payment would be found to be unlawful. The report noted that there were no other development proposals for South-East Ayr on the table and on that basis it was reasonable to discount the possibility canvassed in the opinion that the funding might be seen as being for the whole area and would not therefore be considered to be of immediate benefit to the petitioner. In the circumstances, it was open to the council's Director of Housing, Operations and Development to take the view that the emphasis should be on avoiding financial risk to the council. It cannot be said that the Report is misleading or that it has given councillors inadequate information to make up their minds.

[28] The petitioners have sought to subject the report to an unduly critical reading and have not considered it as a whole. They have focussed on the issue of whether or not the payment by the council would constitute a subsidy rather than the issue considered in the opinions and the report which is whether there is a *risk* that they would be found to constitute a subsidy. The statement in paragraph 5.1 that if the councillors wished to conclude that the payments were not a subsidy they would do so "contrary to legal advice" is a summary of what is said elsewhere in the report in relation to the opinion of counsel. It

does not contain the nuances of the advice taken as a whole but those nuances are apparent from the remainder of the summary given. The petitioner seeks to take this statement in isolation but to do that would be inconsistent with the authorities noted above.

[29] The petitioner placed particular emphasis on the contents of paragraph 7 of the supplementary opinion and said it was not reflected in the report. It states:

> "7. If the Council, in good faith, were to take the view that it would serve the public interest to create the public infrastructure necessary to unlock the development potential of the whole site and were to take the view that it would serve that long-term interest to procure these infrastructure works by contributing to the cost of their being undertaken by the present Developer, then I would agree that the funding of that public infrastructure (assuming at market cost or less) would not constitute a subsidy."

This must, however, be read in the context of the opinion as a whole. That paragraph related only to the provision of the new roundabout on the A77. The following paragraph notes the problems with this approach. It notes that there would be difficulties with the argument and that the circumstances invite the conclusion that the proposal provided a specific benefit to the petitioner. It considers that the decision made on this basis could be subject to challenge. It is clear that the subjective collective view of the council, even formed in good faith, that the funding would serve the public interest by unlocking development of the wider area, would not necessarily prevent it being a subsidy. Mr Wolffe states that the position is the same in relation to improvements to the A77, the equestrian bridge and the park and ride facility. In relation to the School and Park & Ride access road and associated infrastructure he goes further and states that it is "unlikely" that it would be defended as not being a subsidy. What was required of the report, however, was a fair and accurate summary of the opinions as a whole. That was provided. There was no requirement to summarise individual paragraphs.

[30] In the petition, there is also reference to briefings given to councillors prior the council meeting. It is claimed and averred that statements were made there to the effect that the funding would be unlawful. However, the final or definitive statement of the advice in this regard was what was stated in counsel's opinions and the summary given in the report. It is this that must be examined when considering the lawfulness of the decision. If it was necessary to investigate all statements that had been made to councillors at any time, it could be a costly process, would impede the giving and seeking of such advice and adversely affect the conduct of business by councils.

Failure to have regard to a material consideration

[31] The petitioner claims that in the absence of a copy of the opinions being available to councillors there was a failure to take into account a material consideration – counsel's opinions. This does not add anything to the grounds already considered. There was no obligation to provide councillors with the source material in addition to the report. The councillors were notified of the existence of the opinions and were given a fair and accurate summary of them. On the basis of *Patton* it can be inferred that the councillors, in acting in accordance with the recommendation in the report, did so following the reasoning stated in the report. They may have had a copy of the opinions available to them but will have had the summary contained in the report. There is no basis for the assertion that they failed to have regard to the advice that had been obtained.

Careful consideration

[32] The petition includes as one of the grounds of challenge that, "The Decision states that the two Opinions of Senior Counsel were carefully considered by the relevant decision

makers before a decision was taken. That is not correct." Ground 1 within the petition states that it was erroneous to state that the opinions were carefully considered and, "On that basis, the Decision is vitiated by an error of fact".

[33] No authority was cited to me in which a court has evaluated whether, before a decision is taken, there has been adequate consideration of materials by a decision-maker or has even begun to address the question of what degree of consideration must be undertaken for it to be "adequate". In exercising its supervisory jurisdiction, courts always have in mind that the decision in question must be that of the person or body to whom the power or discretion in question has been entrusted. The jurisdiction to review the lawfulness of decision-taking does not extend to conducting an exercise in which the court investigates and then rules on the quality of decision making by means of an examination of the adequacy or otherwise of the consideration by councillors of the papers provided to them.

[34] This challenge fails, however, on a more fundamental basis. The council decision did not include those words "carefully considered" founded on by the petitioner. They do not appear in the minute of the meeting of 12 December 2024. From the materials lodged in court, they appear to have been used first in an email from Ms Caves to the petitioner's solicitors on 18 December 2024 under a heading "Summary of Council Decision of 12 December 2024". The text that follows is not in quotation marks. As it has arisen after the decision, what was said by Ms Caves does not undermine it. There is no merit in this challenge.

The Subsidy Control Act 2022

[35] The petitioner contends that the councillors took into account an irrelevant consideration in that they were informed in the report that the contribution sought by the

petitioner would be unlawful in terms of the Subsidy Control Act 2022. The petitioner argues that in fact there was no risk that the payments would be found to be unlawful under the 2022 Act and that the council had misdirected themselves – or been misdirected by the report – in proceeding on the basis it could. By reference to *R* v *Central Arbitration Committee ex p BTP Tioxide Ltd* 1981 ICR 843 they drew my attention to the well-known rule that a decision-maker misdirects itself when it gets the law wrong or, put another way, the discretion of the decision maker does not extend to determining the law to be applied. The petitioner contends whether or not the payment is a subsidy is a "hard-edged" question. They submit that in the circumstances, the funding would not confer an economic advantage on the petitioner and would not be a subsidy. The respondents dispute that it is a "hard-edged" question and submit that the court could not conclude to grant the declarator sought by the petitioner - that "the provision of a financial contribution by the respondent to the petitioner would not risk being an unlawful subsidy for the purposes of the Subsidy Control Act 2022".

[36] To a large extent the arguments in relation to this ground overlap with the arguments noted above concerning the availability of Mr Wolffe's opinion save that the petitioner's argument here is that that opinion was wrong. Just as with the ground considered above, it is necessary to have in mind what was said in the opinion and what question had been posed by the council. It was not a definitive statement that the funding would constitute a subsidy. The question asked and answer given were couched in terms of the existence of a risk that this would be the conclusion. I consider that the council are correct to say that the matter is not hard-edged. The question of whether the funding for infrastructure is a subsidy does not have a simple clear answer. It would depend on the view taken of whether the funding constituted a benefit specifically to the petitioners. As

Mr Wolffe notes, this would require evaluation of the facts that but for the petitioner's development the council would have no reason to undertake the works. The report notes that there is no proposal to develop the wider area in a manner that would require the works and in the absence of the petitioner's proposed development, the council would not wish to fund them. These factors mean the court does not have sufficient information to state definitely that the funding cannot be a subsidy and could not grant the declarator sought.

[37] Towards the end of the averments in relation to this ground of challenge, the petitioners aver that the risk of it being found to be an unlawful subsidy is low and that if it was found to be a subsidy, there could be an application made to the Competition Appeal Tribunal. These issues were not canvassed in the submissions made to me. However, for completeness, I would say that reducing the decision on that basis would be going well beyond the proper grounds of judicial review and would mean becoming involved in the merits of the council's decision. It is for the council to determine what level of risk there is and, more importantly, what level of risk is acceptable to them. The court cannot substitute its view of the tolerability of risk for that of the council. Finally, it was submitted that contractual provisions could have been negotiated and inserted in any agreement which would have provided protection for the respondent against risks arising from the 2022 Act. What these provisions were and how they would work were not identified in the course of submissions and I consider them no further.

The Public Contracts (Scotland) Regulations 2015

[38] The petitioners argue that the report was in error in referring to a danger of breaching of the 2015 Regulations as they do not apply to the works proposed or, if they do,

it was not a rational reason to refuse permission in principle. This was therefore taking into account an irrelevant matter. The petitioner notes that where the works are not undertaken by a contracting authority, Regulation 14 applies the Regulations to any "works contract which is subsidised directly by a contracting authority by more than 50%". The report noted that:

> "A sum of £12,626,920 is proposed as a contribution towards the Applicant's anticipated costs of £18.42m for the provision of what the Applicant describes as 'Common Infrastructure'".

The petitioner argues that the figure of £18.42 million for the total cost is incorrect. It was submitted that the correct figure should have been £34.5 million as notified to the council by the petitioner's solicitors in a letter dated 4 July 2024. The council, in response, note that the figure of £18.42 million is consistent with the figures contained in the Heads of Terms provided by the petitioner to the council and are in line with a breakdown provided by them from the petitioner's solicitors dated 12 November 2024. The council states that it is clear from the letter of 4 July 2024 that the figure of £34.5 million that the petitioner suggests includes the costs of works for which the council are making no contribution and that these elements would have to be stripped out to arrive at a figure which could be used to determine if the Regulations apply.

[39] On the face of the documents, it does appear that the cost figure referred to by the petitioner includes works which are not part of the proposed Heads of Terms with the council. On the basis of the letter of 4 July 2024, it appears that the figures include the costs of:

> "ground stabilisation, formation, improvement, construction of new roads, associated roundabouts, alterations to existing road infrastructure on A77 and offsite roundabouts, new A77 overbridge, new utilities, internal footbridges, drainage, SUDS and landscaping."

This is a wider scope of works and is supportive of the submission for the council. However, as was the position in relation to the issues of the availability of counsel's opinion and whether it had been "carefully considered", it is necessary to note exactly what was decided. The full terms of the reason relating to the 2015 Regulations contained in the decision are as follows

> "(iii) the provision of grant funding to the Landowner to procure infrastructure works at Corton without ensuring that the Applicant appointed a contractor following a regulated procurement procedure may place the Council in breach of its duty under regulation 14 of the Public Contracts (Scotland) Regulations 2015".

The council submits that this merely says that if there is no regulated procedure it may - rather than will – place them in breach of the duties imposed by the Regulations. The report to the council has noted that the application by the petitioner was for the council to approve providing funding in principle and that if the answer was affirmative, authority would have to be given to council officers to negotiate terms. As such, it was correct to state that there *could* be a breach of Regulation 14.

Obligation to secure best value

[40] In terms of the Local Government in Scotland Act 2003, section 1(1), local authorities are under a duty to make arrangements which secure best value. The report to the council expressed the view that the provision of the funding sought to the applicant would not provide best value (paragraph 3.5.4). An assessment of the expenditure in terms of best value was contained in Appendix 4 to the report. An appraisal of the alternative ways in which the sum of £21.41 million could be used is contained in Appendix 5 of the report. These recognise that if the respondent wished to proceed, further work would be necessary to ensure that best value was secured.

[41] The petitioner's first argument in this respect is that the council's assessment of best value is vitiated by the errors referred to elsewhere in the petition. However, for the reasons set out above, I do not consider that those other allegations are well made and to that extent they do not vitiate the assessment of best value. The petitioner claims that in order to assess whether the works would secure best value, the council would have to take account of the fact that the proposed works are for the benefit of the public and would allow for the development of roads to connect with a new primary school and other communities to be developed. It said that these factors were left out of account in the assessment carried out by the council. In the alternative it is claimed that the was no rational basis for the respondent to conclude that other projects would achieve better outcomes. Finally, it is claimed that no adequate reasons have been provided to explain why the other projects would achieve better outcomes.

[42] The petitioner contends that the application to the council for funding was for a decision in principle with the clear understanding that the detail would need to be considered in negotiation. They contend that aspects of the assessment are concerned with detail and ought not to justify refusal at this stage. Despite this, the duty to make arrangement to secure best value imposed by the 2003 Act means that it was appropriate for the council to consider the issue as part of their decision – even at the preliminary stage. The assessment of best value in Appendix 4 is detailed and runs to 40 pages. The petitioner's criticisms refer to very few elements of the assessment and it is apparent they have been highly selective. The petitioners disagree with the assessment but it is not the role of the court to, in effect, hear an appeal against it. They contend that the council were under duty such as was referred to in *Secretary of State for Education and Science* v *Tameside Metropolitan Borough Council* [1977] AC 1014 to seek further information from the petitioner. However,

the requirement identified by Lord Diplock was that the decision-maker take "reasonable steps" to acquaint himself with the necessary information (page 1065B). The decision as to what steps are "reasonable" is for the decision-maker rather than the court. To succeed in a challenge on this basis a party must establish that the decision-maker acted unreasonably in the *Wednesbury* sense in not obtaining more information prior to taking the decision. In the petition, there is an averment that if the matters were relevant to the decision, the council was under a duty to make reasonable enquiries. I do not agree. This is not an accurate statement of the legal position.

[43] The next argument advanced by the petitioner is to the effect that the report was wrong in characterising what was sought from the council as "grant funding". It was submitted that this was incorrect as the application was made on the basis that the council would be able to recover the payment it made from developers of other land in the vicinity in future. It was submitted that this description was apt to mislead the councillors. The report notes that the intention was that the funding would be returned to the council though future completion of developments (paragraphs 3.1.1, 3.5.11 and 3.7.3). The councillors would have been aware that the petitioner intended that there would be repayment. The proposal was quite clear from the report and I do not consider that the mention of "grant funding" would have mislead the councillors. Standing *Patton*, there is no basis for the petitioner's averment that it is unclear from the decision that any assessment of best value proceeded upon the understanding that there would be repayment.

[44] The next concern expressed by the petitioner under this heading is that what is said about the proposal for a primary school on the Corton site in relation to best value "is, at best, a partial account of the situation". A number of council decisions and policies are referred to. Submissions for the council note that the report was correct in stating that there

was no policy to identify land within the petitioner's development for a primary school. In this regard it is necessary to have in mind what Lord Glennie said in *Patton* to the effect that when reading a report:

> "It must be assumed that it is addressed to a knowledgeable readership, in other words to councillors who, collectively, as a body, are broadly familiar with the relevant statutory tests and other relevant guidance and have some familiarity with the location with which the application is concerned." (para [8])

In that the report was correct as a matter of fact and as the councillors would be aware of the background of policies and guidance from the council this element does not undermine the assessment of best value.

Reasons

[45] The petitioner states that the reasons given for the decision are inadequate. The reasons stated in the decision are as stated in para [1] above. In addition, as the vote was in accordance with the report, it can be assumed that the reasoning set out in the report applied. Having regard to this information, it is not apparent in what respects the petitioner claims to be in real and substantial doubt as to the reasons for the decision. The petitioner claims that the decision made no reference to, and did not indicate why, the submissions that had been made by the petitioner were rejected. As noted above, the council elected to frame the issues that arose relating to subsidies and procurement as ones of avoiding risk. This was a decision that they were entitled to make. The petitioner sought to convince the council that the 2022 Act and the 2015 Regulations did not apply but that was not the issue that the council decided they should be considering before agreeing to pay out over £20 million. As the council were concerned with risk, there was no need to provide reasoning for rejecting what had been said by the petitioner. As the council note, this was

not a situation in which there was a dispute on which the council had to make a determination. It was decision as to how the council would apply its resources.

Disposal

[46] In view of the above, I sustain the third and fourth pleas for the respondent, repel the pleas-in-law for the petitioner and refuse the remedies sought in statement of fact 4 in the petition.