Neutral Citation Number: [2007] EWCA Civ 298
Case No: C1/2006/1443

**IN THE SUPREME COURT OF JUDICATURE**
**COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM QBD, ADMINISTRATIVE COURT**
**MR JUSTICE COLLINS**
**CO86702005**

Royal Courts of Justice
Strand, London, WC2A 2LL

4 April 2007

**Before :**

**LORD JUSTICE PILL**
**LORD JUSTICE MAURICE KAY**
and
**LORD JUSTICE WILSON**

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**Between :**

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| **The Queen (Catt)** | **Appellant** |
| **Brighton and Hove City Council** | **Respondent** |
| **Brighton and Hove Albion Football Club** | **Interested Party** |

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**MR WILLIAM UPTON** (instructed by Richard Buxton Esq) for the Appellant
**MISS MARY MACPHERSON** (instructed by Brighton and Hove City Council) for the Respondent
**MR JONATHAN CLAY** (instructed by D M H Stallard Esq) for the Interested Party

Hearing date : 20 February 2007

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# Judgment

**Lord Justice Pill:**

1. This is an appeal against a judgment of Mr Justice Collins, given on 15 June 2006, whereby he refused the application of Mr John Catt to quash a decision of Brighton and Hove City Council ("the Council") granting a planning permission to Brighton and Hove Albion Football Club ("the Club") on 20 July 2005. The Club play association football, in League Division 1, at Withdean Stadium, Tongdean Lane, Brighton, under a temporary planning permission.

2. The decision permitted the continued use of the stadium until 30 June 2008 and the provision of new stands and extension of existing stands to provide an additional 1966 seats, increasing the capacity of the stadium to about 9,000. Replacement and relocation of a hospitality unit was permitted, as were the addition of purpose built changing rooms and the addition of a stewards' room, club office and new turnstiles. Permission was granted to the Club to play the first match in December on a Saturday [other Saturdays in December excluded], to play up to nine evening matches and up to three matches per season on a Sunday. A permission was also granted with respect to the existing athletics' clubhouse and facilities at the stadium.

3. The stadium is within the urban fabric of Brighton. The appellant lives in a cul-de-sac on the west side of the stadium and suffers significant disturbance as a result of crowds attending football matches.

4. Use of the stadium by the Club is intended as a temporary measure until the Club have obtained an alternative home. A site has been located at Falmer but, as yet, there is no permission to develop it. An earlier permission was quashed by consent upon challenge being made.

5. A temporary permission at Withdean was granted in 1998 and another in November 2002. The current permission, if upheld, subsists until 30 June 2008. Comprehensive conditions are attached to the permission as to the number of matches which may be played, when they may be played, when amplified sound, including music, may be played, which did include Sussex by-the-Sea at the end of half time, and when floodlights may be used. Provision is made for disabled car parking spaces and additional bicycle parking spaces, amongst other things. Some of the conditions are said to be imposed "in the interests of the residential amenities of the locality."

6. The submission made by Mr Upton on behalf of the appellant is that the permission was unlawful because it was granted without an Environmental Impact Assessment ("EIA") having first been made under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 ("the 1999 Regulations"). The Regulations were made pursuant to Section 71(A) of the Town and Country Planning Act 1990 ("the 1990 Act"), having taken into account Council Directive 85/337/EEC, as amended.

7. Application for planning permission was made on 14 February 2005. On 4 March 2005, the Council decided that an EIA was not required for the proposed development. It is common ground that the development is Schedule 2 Development within the meaning of the 1999 Regulations. Regulation 2(1) of the 1999 Regulations provides:

> " 'EIA development' means development which is either – (a) Schedule 1 development; or (b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;"

Paragraph 13 of Schedule 2 to the Regulations includes among Schedule 2 developments any proposed change to or extension of authorised development where the change or extension may have significant adverse effects on the environment.

8. Regulation 4(5) provides:

> "Where a local planning authority or the Secretary of State has to decide under these Regulations whether Schedule 2 development is EIA development the authority or Secretary of State shall take into account in making that decision such of the selection criteria set out in Schedule 3 as are relevant to the development."

The criteria in Schedule 3 are set out under the headings "Characteristics of development", "Location of development", and "Characteristics of the potential impact". Having regard to the points taken on this appeal, it is not necessary to set them out fully. Under the heading "Characteristics of the potential impact", the decision maker must have regard in particular to matters which include the extent of the impact (geographical area and size of the affected population) and the duration, frequency and reversibility of the impact.

9. On 4 March 2005, the Council gave a screening opinion, that is (per Regulation 2(1)), a written statement of opinion as to whether development is EIA Development. The opinion was to the effect that the development was not such development. If an EIA is required, planning permission must not be granted unless the decision maker has first taken into consideration the environmental information (Regulation 3). That means taking into consideration an environmental statement prepared in accordance with Regulation 2(1) of and Schedule 4 to the Regulations.

10. The opinion of the Council was based on their Development Control Manager's conclusion:

> "Brighton and Hove Albion's use of Withdean Stadium undoubtedly has some impact upon the surrounding residential area. However, that impact is limited in frequency and the development is proposed to be for a limited period. The impact can be considered to take place over a fairly sizeable area including related traffic and pedestrian movements

but diminishes rapidly with increased distance from the Stadium. There are no significant polluting or natural resource implications. No features of recognised natural or man-made importance would be significantly affected by the proposal. The Football Club have put in place stewarding measures and sustainable transport arrangements to reduce any impact upon the surrounding area.

From the above considerations it is concluded that, although the proposal is Schedule 2 development, significant effects on the environment will not occur. The recommendation is that the Local Planning Authority adopts a formal screening opinion that EIA is not required for the proposed development contained within [the] planning application …"

11. On 18 May 2005, the Council's appropriate committee resolved that it was minded to grant permission, subject to the Club entering into an agreement, under Section 106 of the 1990 Act, to secure traffic mitigation measures and other safeguards. The Club were required to continue to operate a stewarding plan on the approaches to the stadium, with litter patrol, the stewards to operate a cordon. An attended telephone service was required on matchdays to deal with any complaints.

12. The agreement under Section 106 was made between the Council and the Club on 19 July 2005. On the following day, the document constituting the permission was issued and, in addition to the conditions already mentioned, included reasons for the grant:

"The Council recognises that the applicant [the Club] plays a large role in the local community and economy. An important consideration is the need to find a temporary solution to the difficulties faced by the applicant in finding a permanent venue for home football matches. Against this, another major consideration is the significant disturbance which matchdays can cause to surrounding residents. The Council believes on balance that permission should be given to allow home football matches to be played at Withdean until 30 June 2008, to protect the interests of the applicant until permission can be obtained for a permanent venue. The Council believes that impacts on residential amenity on matchdays (approximately 25-30 occasions per year) can be minimised through conditions. The impact of football matches on the use of the stadium by athletics clubs is also considered acceptable in view of conditions imposed.

Matchdays clearly cause significant disturbance to the surrounding residents and this impact is the main issue for consideration. Many objections have been received on a variety of grounds relating to the impact of the club's activities upon the surrounding residential area. A substantial number of letters of support have been received stressing the importance of the club to the city.

A range of transport measures have been in place for several years and have proved relatively successful. Further investigation of a residents parking scheme can be made to address parking within the cordon and additional measures can be sought to address the proposed additional seats. Environmental Health are satisfied that noise issues can be addressed through appropriate conditions. The frequency and duration of matches is very limited. Athletics facilities will be retained and enhanced. The proposed structures generally have a temporary [sic]

The Local Planning Authority will consult with the Safety Advisory Group in assessing any submissions in accordance with condition 8 [public address system] of this planning permission.

A Section 106 agreement relates to this site."

13. The application for judicial review was filed on 14 October 2005. It was resisted by the Council and the Club on the merits and on the ground of delay. It was alleged that, since the allegation of unlawfulness is based on an allegedly unlawful screening opinion, time began to run on 4 March 2005. Even if it did not, it is submitted that there was undue delay in bringing the claim following the grant of planning permission.

14. Work on the site commenced on 25 July 2005, that is very soon after the permission was granted, and shortly before the beginning of the football league season. The work was completed before the hearing before Collins J took place.

15. In paragraph 7 of his judgment, Collins J indicated that he had granted permission to bring the application for judicial review. It followed that delay was to be considered, he added, in the context of Section 31(6) of the Supreme Court Act 1981 ("the 1981 Act").

16. The judge concluded, at paragraph 23, that the Council had not erred in their conclusion that the development was not EIA Development. He also rejected a complaint about lack of reasoning in the decision to grant permission and a complaint that the Council had taken irrelevant considerations into account; complaints not pursued in this court. The judge went on to consider delay, having recognised that, on his earlier finding, he did not need to do so. The judge held that any challenge should have been made within 3 months of the adoption of the screening opinion on 4 March 2005. It appears that he went on to hold, though without clearly considering it as a separate issue, that delay after 20 July 2005 would have defeated the claim in any event.

17. Mr Upton takes as his starting point the use by the Council of the expression "significant disturbance" in relation to the proposal which is, it is submitted, inconsistent with their opinion that "significant effects on the environment" will not occur. The use of the expression in the reasons for the grant of permission and elsewhere did not, in my judgment require a decision that an EIA was required. The disturbance was "significant disturbance which matchdays can cause to surrounding residents". The Council were entitled to have regard to the impact being "limited in frequency" and to the absence of other "polluting or natural resource implications". By conditions, the permission limits the number of matches which may be played, the days on which they are played and what ancillary activities are permitted. Careful consideration was given to the traffic and noise implications of the permission.

18. Mr Upton's central submission is that the screening opinion was unlawful because it unlawfully relied on prospective mitigation measures when considering whether the development was likely to have significant effects on the environment. The correct approach is to consider the development described in the application, it is submitted, and not the development subject to proposed mitigation measures. Existing measures dealing with the additional traffic created by matches remained controversial and problematical, it is submitted, and the measures proposed to allow for the extension of seating were untried. Assumptions are made about the success of remedial measures. Past remedial measures do not necessarily deal with future problems. The Council also wrongly had regard to unspecified alternative transport proposals.

19. Before considering the merits of that submission, it is necessary to consider the evidence before the Council and the judge. The judge decided that, for the purpose of considering delay, time began to run when the screening opinion was issued on 4 March 2005. The judge stated, at paragraph 34, that it was a decision "which has immediate legal effect and the fact that it may in theory be changed is nothing to the point. So here the challenge to the opinion should have been made before the grant of permission was considered".

20. Both in the development control manager's report, which led to the decision that an EIA was not required, and in the planning officer's report which led to the grant of permission, detailed consideration was given to environmental factors. I refer to the development control manager's report because it is the decision based on that which is claimed to be unlawful. The development control manager stated:

> "Whilst a more intense environmental impact may be expected from the proposal compared to established use of the Stadium for athletics, the character of the use and its impact is similar. As stated above, it is primarily human activity on match days that could generate environmental impacts."

The development control manager correctly stated that "the present assessment is to be limited to the impact of the present development proposal", though that impact should plainly in my view be considered in the context of the existing development.

21. The stadium is "situated within a generally residential outer urban area with average density". The traffic implications are considered in detail. The Club operate "stewarding measures" which attempt, on

a voluntary basis, to restrict parking in the residential streets near the stadium. The Club predict that "74 additional cars will be make the journeys associated with the proposed additional 1966 seats but will be prevented from parking within the cordon currently operated by the Club". Monitoring arrangements have shown that "in the last two seasons, an increased level of on-street parking of approximately one quarter to one third above baseline non-match levels has been recorded. This equates to approximately 400 additional cars parked within the cordon. While this represents a considerable increase in on-street parking during matches, this impact is spread over an area of approximately 2 to 3km. Numbers of cars parked on-street on matchdays remain far below on-street parking levels seen in other parts of the city."

22. It is not suggested that the planning officer's subsequent report is inconsistent with the earlier report. It repeats much of the material. Reference is, however, made to a proposed third park-and-ride scheme to help to reduce parking within the cordon. In the event, that scheme did not come to fruition. The relevant road order was revoked in early 2006, that is after the grant of permission.

23. We do not know what debate there was in Council on the contents of the planning officer's report. The Council's reasons for granting permission are however set out in detail in the consent of 20 July 2005, and have already been cited.

24. To succeed in the application for judicial review, the appellant must demonstrate that the decision that an EIA was not required was unlawful. I see no merit in the submission faintly made that the absence of a reference in the 1999 Regulations to remedial measures assists the appellant's case on Regulation 2(1).

25. Reliance is placed on the decision of this court in *Bellway Urban Renewal Southern v Gillespie* [2003] 2 P&CR 16. In *Gillespie*, the proposed development was a large residential development on a 3.5 hectare former gas works site. The land was extensively contaminated. Not all of it had been investigated, partly because there were still on site full gas holders. It was the Secretary of State, as planning authority, who decided that an EIA was not required because a condition was attached to the permission which required detailed site investigation to be done prior to the start of development. The permission was quashed by Richards J, whose decision was upheld in this court.

26. As I stated in *Gillespie*, the wording of the 1999 Regulations reflects, as far as is material, the language of Council Directive 85/337/EEC. The requirements were considered by the European Court of Justice in *World Wildlife Fund & Ors v Autonome Provinz Bozen & Ors* [2001] 1 CMLR 149. In deciding whether an EIA is necessary, "examination of the actual characteristics of any given project" is required (paragraph 37). An EIA is required "unless the specific project excluded could, on the basis of a comprehensive assessment, be regarded as not being likely to have such effects [significant effects on the environment]" (paragraph 45).

27. That approach does not lend itself to rules of thumb as to whether conditions or remedial measures may be taken into account or as to the extent to which their likely effect may be predicted. In *Gillespie,* the need for substantial future site investigation was crucial to the decision whether an EIA was required. I stated, at paragraph 39, that to consider the proposed development shorn of remedial measures incorporated into it "would be to ignore the 'actual characteristics' of some projects." Scrutiny of the likely effects of the particular development project is required:

> "All aspects of the development project must be considered; the relevant considerations may be different in a case where the central problem is the eventual effect of the development upon the environment and a case such as the present where the central problem arises from the current condition of the land."

28. The Secretary of State's error in granting permission in *Gillespie* was in assuming that a planning condition which required comprehensive investigation of the condition of the land provides "a complete answer to the question whether significant effects on the environment [are] likely." The planning condition "itself demonstrates the contingencies and uncertainties involved in the development proposal" (paragraph 40) and "when making the screening decision, these contingencies must be considered and it cannot be assumed that at each stage a favourable and satisfactory result will be achieved" (paragraph 41).

29. Reliance is placed in particular by Mr Upton on the statement by Laws LJ in his concurring judgment. He stated, at paragraph 46:

> "Prospective remedial measures may have been put before him (the Secretary of State) whose nature, availability and effectiveness are already plainly established and plainly uncontroversial; though I should have thought there is little likelihood of such a state of affairs in relation to a development of any complexity. But if prospective remedial measures are not plainly established and not plainly uncontroversial, then as it seems to me the case calls for an EIA."

30. Arden LJ stated, at paragraph 49, that the decision turns "not on the complexity or controversiality of the development as such but on the nature of the remedial measures contemplated by such conditions."

31. Relying on a commentary in the Journal of Planning Law, at [2007] JPL 81, on the decision of Collins J in the present case, Mr Upton seeks a "neat distinction" between routine measures and project specific provisions. Neat distinctions may be a comfort to decision makers but carry the danger that they may distract decision makers from their central duty, which is to examine the actual characteristics of the particular project. In the present case, it would be ludicrous to ignore conditions imposed as to the frequency of football matches, the days on which they may be played and the music which may accompany them. An activity involving thousands of people which occurs daily has more effect on the environment than one which occurs on a limited number of occasions a year and for no more than a few hours on each occasion.

32. Similarly with traffic management measures, in considering the effect of the additional capacity of the stadium, the Council were not required to shut their eyes to the known effect of the existing development, including studies of the movements involved, the monitoring scheme operated by the club, the extent of parking on matchdays as compared with non-matchdays, or studies upon the number of additional cars likely to be approaching the stadium by reason of its increased capacity and the continuing role of the monitoring scheme in the new situation.

33. This is a very different development from that proposed in *Gillespie*. Developments come in all forms and the approach to the screening opinion must have regard to the development proposed. There will be cases, such as *Gillespie*, where the uncertainties present, whether inherent or sought to be resolved by conditions, are such that their favourable implementation cannot be assumed when the screening opinion is formed.

34. On the other hand, there will be cases where the likely effectiveness of conditions or proposed remedial or ameliorative measures can be predicted with confidence. There may also be cases where the nature, size and location of the development are such that the likely effectiveness of such measures is not crucial to forming the opinion. It is not sufficient for a party to point to an uncertainty arising from the implementation of the development, or the need for a planning condition, and conclude that an EIA is necessarily required. An assessment, which almost inevitably involves a degree of prediction, is required as to the effect of the particular proposal on the environment, and a planning judgment made. (See also the judgment of Ouseley J in *Younger Homes (Northern) Limited v First Secretary of State* [2003] EWHC 3058 [2004] JPL 950 at paragraphs 59 to 62 citing Dyson LJ in *R(Jones) v Mansfield District Council* [2003] EWCA Civ 1408.)

35. I repeat my statements in *Gillespie*, at paragraph 36, that the decision maker is not "obliged to shut his eyes to the remedial measures submitted as a part of the planning proposal", and that "in making his decision, the Secretary of State [the planning authority] is not required to put into separate compartments the development proposal and the proposed remedial measures and consider only the first when making his screening decision". Laws LJ was considering the facts in *Gillespie* and I do not consider he was asserting a general principle that, only when remedial measures are "uncontroversial", can they be taken into account when giving a screening opinion.

36. Having referred to *Gillespie*, Dyson LJ, at paragraph 39 in *Jones*, stated:

> "The uncertainties may or may not make it impossible reasonably to conclude that there is no likelihood of significant environmental effect. It is possible in principle to have sufficient information to enable a decision reasonably to be made as to the likelihood of

> significant environmental effects even if certain details are not known and further surveys are to be undertaken. Everything depends on the circumstances of the individual case."

37. When forming a screening opinion, the Council were not required to ignore either the conditions proposed to limit the scope of the development or the conditions providing for ameliorative or remedial measures. The consequences of providing the additional seating, and other changes, could not be predicted with certainty but, as Collins J noted, the Council had extensive knowledge and experience, supported by surveys, of the impact of existing football league and cup matches upon the environment. On the basis of that, and the studies into future impact, they were entitled to assess the likely impact of the additional capacity proposed in the context of the continuing ameliorative measures also proposed and to form the screening opinion they did.

38. No error of law in applying that test in Regulation 2(1) was involved. It was a lawful screening opinion and I would dismiss the appeal.

***Delay***

39. Written objection was made to the screening opinion on 16 March 2005 but, as already stated, the application for judicial review was not made until 14 October 2005, that is over seven months after the screening opinion was issued and almost three months after the date of the planning permission on 20 July. The judge added that he would in any event "have refused relief on the ground of delay".

40. The appellant relies on the decision of the House of Lords in *R (Burkett) v Hammersmith and Fulham LBC* [2002] 1 WLR 1593. A local planning authority had resolved that outline planning permission be granted for a development subject, inter alia, to completion of a satisfactory Section 106 agreement. About eight months later, the agreement having been made, outline planning permission was granted and application to apply for judicial review was made within a week of that grant. The relevant point under consideration was whether "the grounds for the application first arose", within the meaning of RSC Ord 53, Rule4(1) (replaced by CPR Rule 54.5(1)) on the date of the resolution or on the date of the grant. Lord Steyn, with whom the other members of the Committee of the House agreed, said, at paragraph 51, that the words refer to the date to the grant. In reaching that conclusion, Lord Steyn stated, at paragraph 46: "Legal policy favours simplicity and uncertainty rather than complexity and uncertainty."

41. At paragraph 49, Lord Steyn rejected an approach by which a series of operative dates could be taken as the dates in the planning process from which time starts running. He stated:

> "They involve the court retrospectively assessing when it was reasonable for an individual to apply for judicial review. The lack of certainty is a recipe for sterile procedural disputes and unjust results. By contrast if the better interpretation is that time only runs under Ord 53, Rule 4(1) from the grant of permission the procedural regime will be certain and everybody will know where they stand."

42. Lord Slynn of Hadley stated, at paragraph 5:

> "It seems to me clear that because someone fails to challenge in time a resolution conditionally authorising the grant of planning permission, that failure does not prevent a challenge to the grant itself if brought in time, i.e. from the date when the planning permission is granted. I realise that this may cause some difficulties in practice, both for local authorities and for developers, but for the grant not to be capable of challenge, because the resolution has not been challenged in time, seems to me wrongly to restrict the right of the citizen to protect his interests. The relevant legislative provisions do not compel such a result nor do principles of administrative law prevent a challenge to the grant even if the grounds relied on are broadly the same as those which if brought in time would have been relied on to challenge the resolution."

43. Those considerations apply equally in the present situation. Miss Macpherson, for the Council, and Mr Clay for the Club, submit that *Burkett* does not apply. A screening opinion, unlike a resolution to grant planning permission, is a free standing and self-contained decision which has immediate legal effect.

Under Regulation 20(1) of the 1999 Regulations, a screening opinion must be placed on the register of applications kept pursuant to Section 69 of the 1990 Act. Regulation 5(5) of the 1999 Regulations requires that a copy of the screening opinion forthwith be sent to the person who made the request for the opinion, in this case the Club.

44. Since the lawfulness of the grant of permission is now challenged only by reference to the alleged unlawfulness of the screening opinion, the date on which the grounds to make the claim first arose was the date of the screening opinion, it is submitted. The judge having granted permission, the objection on the ground of delay is, in this case, to be decided in the context of Section 31(6) of the Supreme Court Act 1981 which provides, insofar as is material, that where "there has been undue delay in making an application for judicial review, the court may refuse to grant any relief sought on the application if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration."

45. Reliance is also placed on a screening opinion's close connection with the actual application for planning permission and the likelihood that the views expressed in the screening opinion will be carried forward into consideration of the application for permission, as they substantially were in this case. If the date of the screening opinion is the relevant date, the Club have undoubtedly been prejudiced by delay because in July 2005 they entered into a substantial building contract involving them in heavy expenditure.

46. The judge held that the screening opinion "was not the sort of decision with which *Burkett's* case was concerned" (paragraph 32). He relied on the statement of Sullivan J in *R (Malster) v Ipswich Borough Council* [2001] EWHC Admin 711, which pre-dated *Burkett* and was not cited in it. Sullivan J stated:

> "It is not appropriate to wait until after planning permission has been granted, when it is too late to remedy the omission, and then complain that the screening opinion, which has been on the public register for some months, was erroneous. Each case will of course depend on its own particular facts but, as a general rule, where there is a discrete challenge to a screening opinion, it should … be made promptly so that any error, if there is one, can be remedied before the planning application is considered by the local planning authority."

The judge held that those observations were unaffected by *Burkett* because the screening opinion is a decision which has immediate legal effect.

47. In my judgment, the principle established in *Burkett* covers the present situation. Lord Slynn, in *Burkett*, expressed concern about restricting the right of a citizen to protect his interests. It is the grant of planning permission which affects those interests, even if the grounds relied are broadly the same as those which would have been relied on to challenge the screening opinion. Following a screening opinion, planning permission may be refused or may be granted in a form different from that contemplated when the screening opinion was sought. I have no doubt that on occasions that occurs.

48. Ouseley J in *Younger Homes (Northern) Limited v First Secretary of State* [2003] EWHC 3058 [2004] JPL 950 also stated, obiter, at paragraph 84:

> "The real point was that the stage at which the claimant's rights were definitively at issue was the grant of planning permission, even though there were a number of steps in the decision- making process which had to be gone through for that permission to be issued. Some of those did have legal consequences akin to those attributed to the screening opinion here. But there was no certainty that the rights of those aggrieved would be affected until the grant of planning permission by the local authority in *Burkett* or by the First Secretary of State here."

49. I agree with that approach. To deprive a citizen of the right to challenge a planning permission by way of judicial review would be a major and a retrograde step. The screening opinion certainly has a formality and status in the statutory planning scheme. It may itself be challenged and that may be the appropriate course in some situations. However, the opportunity to challenge does not affect the right to challenge by judicial review a subsequent planning decision. The opinion does not create, or inevitably lead, to a planning permission and the right to challenge a subsequent planning permission relating to the same proposed development is not, in my judgment, defeated by the passage of time between the screening

opinion and the planning permission. Moreover, this is not a case where the screening decision was received in silence. Its lawfulness was challenged by the appellant in a letter of 16 March 2005 and the objection was noted in the planning officer's report of 18 May. A detailed letter of objection was sent to the Council by the appellant's solicitor on 14 July.

50. The possible remaining question in that event is whether the application is defeated by the passage of time between the grant of permission and the application for judicial review. The appellant had first applied for public funding to pursue the application on 27 July 2005 and, on the following day, his solicitors wrote to the Council, and copied to the Club, a letter stating that, subject to the grant of legal aid, they were instructed to issue an application for judicial review.

51. The judge dealt with the question very briefly, if at all, it not being necessary to do so in the light of his earlier findings. The appellant has relied on the earlier notification that there would be a challenge, the lapse of time due to the uncertainty about the road order, the need to obtain legal aid and the alleged lack of additional prejudice to the Club, work under the planning permission having commenced very soon after the permission was granted.

52. Because the court does not have the advantage of the trial judge's consideration of the timetable of events, and because it is not necessary to the decision of this court, I do not propose make a finding on that issue. However, I would reiterate two general points. The first is the importance of applying for judicial review without delay. Time did not begin to run until the permission was granted but, where there is a challenge to that permission based on the alleged unlawfulness of the screening opinion, the party challenging the planning permission will normally have had notice of that opinion. In considering delay, the court would be entitled to take into account that prior knowledge when considering the time by which proceedings should have been instituted following the grant. The second point is that, even when a decision to proceed with a development has been taken at a time when challenge is possible, and work has proceeded, subsequent delay remains capable of causing prejudice to the developer and detriment to good administration.

53. For reasons given earlier, I would dismiss this appeal.

**Lord Justice Maurice Kay:**

54. I agree.

**Lord Justice Wilson:**

55. I also agree