

Neutral Citation Number: [2012] EWHC 3725 (Admin)

Case No: CO/5670/2012

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21st December 2012

Before :

MR JUSTICE LINDBLOM

Between :

R (on the application of)
Daniel Coleman

Claimant

- and -

The London Borough of Barnet Council

Defendant

- and -

The Trustees and Governors of Etz Chaim
Primary School

Interested Party

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

Juan Lopez instructed by the Claimant
Alexander Booth (instructed by London Borough of Barnet) for the Defendant
Paul Brown QC (instructed by Berwin Leighton Paisner) for the Interested Party

Hearing dates: 24 October and 5 November 2012

Judgment
As Approved by the Court

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Mr Justice Lindblom:

Introduction

1. Did the London Borough of Barnet Council (“the Council”), as local planning authority, discharge the public sector equality duty in section 149 of the Equality Act 2010 when determining an application for planning permission for the development of a school on land that was once the Wyevale Garden Centre in Daws Lane, Mill Hill, London NW7? That is the central question in this claim for judicial review.
2. The claimant, Daniel Coleman, opposes the development. He lives near the site, at 1-2 Hillside Cottages, Milesplit Hill. He is disabled; he suffers from Prader-Willi Syndrome, a chromosome abnormality, and is cared for at home by his mother, Ms Zoe Samuelson.
3. The development was proposed by the interested party, the trustees and governors of Etz Chaim Primary School (“the Trust”). Planning permission for it was granted by the Council on 30 March 2012. The claimant and many others had objected to the proposal because they wanted the site to be used, as it had been when the garden centre was there, to provide a recreational and educational facility for the local community, which was of particular benefit to people with disabilities and the elderly.
4. The claim for judicial review was originally based on nine grounds, two of which have now fallen away. On 11 October 2012, when he refused the claimant’s application for an interim injunction to halt the construction of the school, Irwin J observed that he had “reservations about whether there is a serious issue to be tried”. He ordered an oral hearing of the application for permission to apply for judicial review. When the case came before me on 24 October 2012 the parties agreed that I should conduct a rolled-up hearing of both the application for permission and, if permission were granted, the claim itself. That is what I did.

The evidence

5. The claim is supported by evidence provided by the claimant himself (in his witness statements dated 30 May 2012 and 28 September 2012), by Ms Samuelson (in her witness statements dated 21 August 2012 and 10 October 2012), by Mark Mackay, who had worked in the garden centre (in his witness statement, which is not dated), and by Michael Gilbert, a chartered surveyor specializing in garden centres (in his witness statement, which is not dated). Evidence has been provided by the Council in the witness statement of James Wills-Fleming, its Head of Commercial Programmes. The Trust’s evidence is in the three witness statements of Adam Dawson, its Chair of Governors, (dated 21 June 2012, 7 October 2012 and 10 October 2012). Kier Construction Limited, which has a contract to build the school, gave evidence opposing the application for an interim injunction, in the witness statement of Richard Lines (which is not dated).
6. The claimant explains in his first witness statement why he and others deplore the loss of the garden centre. He says:

“

1. I live within walking distance of land that was formally known as the Wyevale Garden Centre

... .

...

4. Up until the closure of the centre I had been a frequent visitor to the Garden Centre, sometimes visiting as often as 3 times a week, for in excess of 24 years.
5. I am a 33 year old ... Jewish sufferer of Prader-Willi Syndrome ... , a rare genetic disorder arising from chromosome abnormality, the symptoms of which include cardiac deficiency, fatigue and learning disabilities and which, at a progressive stage, is life-threatening.
...
11. I was able to walk to the Garden Centre and would spend considerable time there partially because it had multiple uses, had plenty of open space, was a truly accessible meeting place for myself and my neighbours and it was under cover and heated in the winter – which is important because I cannot control my body temperature. ...
12. Ever since the Garden Centre opened, when I was 10 years old, it has always been used by people like me so I never felt uncomfortable. I was then at [a] special school for people with learning disabilities as well as for the elderly and the staff taught me to garden because it was something that many people with learning disabilities could do on an equal level with people who do not have problems with learning. At the Garden Centre, I could chat to those with or without disabilities on an equal footing and my neighbours and I became friends. ...
13. I am fully aware that the breadth of the facility offered at the Garden Centre for the disabled and elderly is unequalled within Mill Hill (including the town centre). No other facility within the local area comes even close to the nature of the facility provided at the Garden Centre. The Garden Centre incorporated many green spaces, indoor and outdoor horticultural areas, an aquatic centre and all-day café, all within an environment which proved fully accessible to the disabled and elderly. The openness of the Site enabled the accommodation of sizeable groups of disabled and elderly users. Prior to the closure of the Garden Centre, I regularly saw groups of 80+ disabled and elderly users and their carers for dedicated exercises, events and activities. Sometimes Jewish Care used to book out the whole café for the afternoon leaving the outside area for other visitors. Everyone was happy and it is not nice to now be at home with nowhere to go.
14. There are many other charities and Social Service groups, nearing 15 in number I would estimate, who regularly used the Garden Centre that I would see and others have written in support[,] including Barnet Adult Social Services, Barnet College and Flower Lane Autism (catering for adults). I exhibit some of these letters as Exhibit DC/1.
...
19. There are housing estates within walking distance[,] for example where 76 people with an average age of 85 [are] located[,] with a further estate housing many more elderly and disabled residents also within less than a mile of the site.
20. The Garden Centre was not just ‘useful’, but vital for the disabled and elderly. Certainly I and many other disabled friends simply have nowhere else to go and are left isolated. I no longer see my neighbours except those immediately either side of me and they don’t know me.
...
28. ... [The garden centre] was not just a place for individuals. [It] served as an educational resource for disabled and elderly users, offering bespoke services and activities not accessible to these groups elsewhere and which include ... restorative visual and tactile services, water-life experiences, lessons in horticulture and flower and vegetable cultivation. ...
...

30. I have tried to explain why this is a unique site due to its association with the community for over 80 years. Therefore, it is not the case that any and all Garden Centres or other large open space, multiple occupancy businesses [require] protection from the court. However, this specific Garden Centre in this specific location is unusually rare. ...

...

37. No comparable facility is located within reasonable walking or public transport distance of the homes of a high proportion of the disabled and elderly visitors to the Garden Centre. ...

...

53. I am bringing this action because someone has to stand up for more than 1,000 elderly and disabled residents who are being told by [the] Council that their views are less important than a Policy on Free Schools. ... I don't understand this and nor do almost 1,000 elderly and disabled people in our area and I am asking the court to assist and give me justice on behalf of all the elderly and disabled.

54. I wish to emphasise that this is not about a 'much loved facility' but a place that was essential to my quality of life. ...".

7. In her first witness statement (in paragraphs 24 and 25) Ms Samuelson contests the need for the Trust's proposed school. She refers (in paragraph 25 v)) to a report to the Council's Cabinet dated 3 November 2011, which had identified a shortfall in capacity for reception classes. Ms Samuelson goes on to assert (at paragraph 25 v) a):

"The November 2011 report provides a strategy that will address the 60 expanding to 90 child shortfall of school places The strategy does not include Free Schools as they do not come under the Council's authority Therefore, the shortfall is satisfied by other school place provision. In other words, there was no necessity for the School to fill the shortfall as plans were already in place in November 2011 to permanently resolve any shortfall which excluded the School [.]".

Background

The proposed development

8. The Trust is a charity established in 2011 under the Government's "free schools" programme. With a temporary planning permission granted by the Council in May 2011 it set up its school in accommodation at 80 Daws Lane. The school has 76 children in three classes. Another 28 are expected to join in September 2013, if by then the school has been moved to the site once occupied by the garden centre.
9. Mr Dawson describes in his evidence how the Trust came to take a long leasehold interest of the site. The Trust acquired the site in September 2011. The garden centre closed in the same month. The Trust's lease has 101 years remaining. Wyevalle had approached the Trust as a willing vendor, prepared to sell the site at book value because the garden centre was, or was becoming, unviable.
10. Planning permission for the redevelopment of the site for school use was first granted by the Council in September 2011. That permission was successfully challenged by the claimant in a claim for judicial review. One of the grounds of that claim, later conceded, was that the

Council had failed to discharge its obligations under section 149 of the Equality Act 2010. The permission was quashed by consent on 23 March 2012.

11. On 12 October 2011 the Trust made a second application for planning permission. This was the application on which the Council granted the planning permission now challenged in these proceedings. As in its first application, the Trust's proposal involved the change of use of the site from Class A1 use to Class D1 use and the conversion of the building on the site for school use. This is intended to be a permanent replacement for the school at 80 Daws Lane. The Trust had indicated that it would make the school available for use by local people, mainly outside school hours. Its application was supported by a report, prepared by PFS and DTZ, in which other sites for the school were examined and rejected. None of them was found to be both suitable and available for the proposed use.
12. The Council resolved to approve the Trust's proposal at the meeting of its Planning and Environment Committee on 31 January 2012.

The objections to the Trust's proposed development

13. There were many objections to the Trust's proposals, many of them from people with disabilities, elderly people, and those responsible for their care, whose letters describe the effect on their lives of the closure of the garden centre. Objections came from, and on behalf of, people with physical disabilities, people with mental disabilities and people with learning disabilities. Mr Juan Lopez, who appeared for the claimant, drew my attention to several of them to illustrate the range of disabilities represented among those who opposed the development: for example, the Flower Lane Autism Service, physically disabled residents of the Wood Court Care Home, severely disabled and elderly residents of Henry Nihill House, an elderly resident of Rowlands Close who suffers from Alzheimer's disease, the mother of an eight year old boy with autism, who lives in Watford Way, a resident of Birkbeck Road who has had an aortic valve replacement and whose husband suffers from mesothelioma, a resident of Stanhope Gardens whose sister is wheelchair-bound, a partially sighted resident of Jervase Street who is 93 years old, an elderly resident of Flower Lane who has suffered from multiple sclerosis for 60 years, a resident of Greenhayes Avenue who suffers from "eye problems", a resident of the Chalet Estate who uses a "wheeled walker" or walking sticks, two elderly residents of the Chalet Estate who are "partially disabled" and use walking sticks, two residents of Newcombe Park who have a 44 year old daughter with "multiple physical disabilities" and has to use an electric wheelchair, a resident of Birkbeck Road whose mother is 84 years old, "has extremely restricted mobility and suffers from Alzheimer's disease", and an 87 year old resident of the Marshall Estate.
14. On 24 January 2012 Ms Samuelson wrote to the Council on behalf of Action Mill Hill, which, she said, "represents over 1,000 elderly and disabled members of the community", as was "demonstrated by the over 1,000 letters of objection that have been provided by elderly and disabled members of the community based on the template provided to these individual local residents by Action Mill Hill". Ms Samuleson complained that the Council's latest consultation on the Trust's proposals was "seriously flawed". She reiterated objections already made, among them "Traffic congestion", "Pedestrian safety", "Diminution of shopping facilities where there is no accessible alternative", "Discriminatory policies and breaching the Equalities Act 2010", "Breaching equal access Policies" and "Not responding to local citizens and their needs". In the "Conclusion" to her letter she said this:

“This response has been put together by individuals in the Action Mill Hill who have no experience or qualifications in any of the matters stated. However, we have managed to identify serious flaws within the application. Any failure by Barnet’s Planning team to address these issues, even should they disagree, demonstrates clearly their failure to properly assess the application from an independent stance. They are after all the experts.

The application documents demonstrate that the application fails on air quality, traffic generation and community use. The application also fails to demonstrate why the balance should be in favour of the increased school, that doesn’t exist yet ([i.e.] No children suffer) compared to the impact we have demonstrated providing around 1,000 letters from members of the elderly and disabled many of whom can’t move elsewhere as they are in protected housing.

A number of elderly and disabled residents either didn’t compose objection letters for fear of the intimidation and misinformation from the applicants and the school’s Governors or failed to understand the complex consultation process undertaken. ...

The balance is clearly in favour of rejecting this application and any finding that the application value outweighs the harm caused to the elderly and disabled is demonstrably unreasonable.

Please consider our detailed remarks within the planning assessment by Barnett’s Planning Team as we are certain that they are at least worthy of consideration.”

The planning officers’ report

15. Before the Council’s committee met, its planning officers prepared a lengthy report. The Council had instructed Ms Nathalie Lieven QC to advise on the content of the report. She was present at the committee meeting on 31 January 2012.
16. In the summary at the beginning of their report the officers identified as one of the main headings – under which their assessment of the proposal would be set out – “The Equalities Act 2010 [sic] and implications arising from the proposals”. The officers considered, as one of the “main issues” raised by the Trust’s application, “the implications and impacts for residents [of] the closure of the [garden centre]”. They noted that many local residents had said the garden centre was a well used and valuable local facility, particularly for elderly and disabled members of the community who are unable to walk far or to use public transport to travel elsewhere. For many of these people the garden centre had provided a shop and café that they could get to easily and where they could meet friends. Many of those who had responded to consultation had said that if permission were granted the Council would be in breach of its duties under the Equality Act 2010, which, said the officers, “requires the Council to pay due regard to the need to eliminate discrimination and promote equality with regard to those with protected characteristics and foster good relations between different groups when discharging its functions, due to the disproportionate impact on the elderly and disabled”. The Council had consulted widely on the Trust’s proposals. The officers had analysed the responses and had found that “the vast majority of objectors” lived close to the site and in the Mill Hill area, whereas many of those who supported the proposals lived outside that area. Other facilities available for residents in the local area had been considered. There was a “significant level of support” for the development, recognizing the benefits it would bring for education.
17. The officers recommended that the proposals be approved, subject to an agreement under section 106 of the Town and Country Planning Act 1990 to secure improvements to the highway, a financial contribution towards the monitoring of a travel plan for the school, and the submission of a Community Access Plan, that the application be referred to the Mayor of

London and the Secretary of State, and that if the Mayor did not direct its refusal and the Secretary of State did not call it in, conditional planning permission be granted.

18. In making that recommendation the officers presented the Council's committee with the summary reasons for approval that they suggested should be put into the decision notice. In these reasons the proposed development was said to accord with strategic guidance and policies in the London Plan 2011 and the adopted Barnet Unitary Development Plan (2006). The recommended reasons went on to state:

"The proposal is considered to be acceptable with regard to development plan policies subject to appropriate planning conditions. It would introduce valuable education accommodation in the borough, having an acceptable impact on the character and appearance of the site, wider locality and its Green Belt location. The proposal would have no significant impact on the amenities of neighbouring occupiers and can be accommodated on this site without significant adverse impact on local roads and the highway network. Having taken all material planning matters into consideration and having paid due regard to the need to eliminate discrimination and promote equality with regard to those with protected characteristics, officers conclude that ... the benefits to the wider community of the provision of new educational facilities outweighs [sic] the adverse impact on those with protected characteristics."

19. In paragraph 1.11 of their report the officers noted that about 3,800 "neighbours" had been consulted, of whom about 1,550 had objected and 980 had supported the proposal. In paragraph 1.13 they summarized the representations that had been made. Responses from those who considered themselves to have a disability and from those older than 65 were collated (paragraph 1.14 of the report). This was done in a series of tables, showing the "breakdown of representations received by area", the "breakdown of representations received where respondents indicated that they were over 65 and/or had a disability or cared for someone with a disability" and the "responses on issues receiving [the] greatest number of comments" among which were "a) loss of community facility", "b) traffic issues", "e) breach of Equalities Act 2010 [sic]", "g) alternative sites", "i) inadequate community use proposals", and "j) breach of equal access policies".

20. The officers went on (in paragraph 1.16 of their report) to summarize the issues raised:

- "a) Loss of valuable community use meeting local needs

Until recently, the site was functioning as a garden centre, a community use. Such a use could easily be reinstated if this application were refused. The specific characteristics of the site enable such unique community uses to thrive, [i.e.] the footprint and openness of the site, its location and incorporation of a number of green spaces alongside buildings that may house sizeable groups make this site key for community use. The site catered regularly for large groups of disabled and elderly users and their carers for dedicated activities. High number of former users have no viable alternative to the use of the site. No other site in and around Mill Hill provides any like amenity for daytime use for disabled and elderly users. (1612 responses in total).

...

- e) Discriminatory policies and breaching the Equalities Act 2010 [sic]

Section 149 subsection 5 of the Equalities Act 2010 [sic] requires a public authority to exercise its functions with due regard to fostering of good relations between persons who share a relevant protected characteristic and persons who do not share it. Recent court judgements indicate that the elderly and disabled should be given priority. Garden centre site

is a primary centre for interaction between the mentally and physically disabled and able-bodied members of the community. Barnet's LDF Statement of Community Involvement states 'We are also committed to making Barnet a place where disabled people can lead fulfilling lives and play a full part in society.' Any rhetoric and statements made by government ministers and CLG statements cannot possibly match legislation enacted by Parliament.

As landowner the Council has a duty to pay due regard (interpreted as giving a 'priority') to those with protected characteristics. This is enhanced by the special and unique circumstances in this location [i.e.] surrounded by housing restricted to the elderly and disabled, always had a community asset in this location, focus of support and visitation by large number of mental health charities many of whom receive funding from Barnet Council, is a residential area 'fenced' off from The Broadway and many residents will not and cannot use the underpass because of safety concerns, the Council own the land which has a 103 year restricted lease, purchased originally by the Council and protected by positive covenant by use by community 'for ever' and is protected as green belt land. (1283 responses in total).

...

g) Alternative sites

Alternative sites are not true alternatives and demonstrate a complete disregard for this significant material planning consideration. Other sites rejected because too far away (10 sites over 7 miles away so clearly not relevant), 7 rejected because 'unavailable[]' (including one which has been a school for 70 years), 2 require renovation (appear arbitrary as construction costs for Wyevale site are over £2.4 million), 4 allegedly 'not value for money'. Unreasonable to make such an uninformed assessment as Wyevale site costs public approx. £5 million. Alternative sites within 2 miles of Daws Lane demonstrate there are no 'exceptional circumstances' requiring use of this site for a brand new school. Department of Education have failed to indicate why other sites considered were rejected save for two criteria – cost and timeliness. By the end of the project the cost of the site will far exceed the £7 million originally estimated and the site will be unlikely, considering legal challenges, to move ahead for many years. (491 responses in total).

i) Inadequacy of the applicant's proposals as to community use

Proposed community use doesn't provide a replacement for what is lost. No significant interaction capability for elderly and disabled. Basically what is proposed is a kosher venue for hire on some evenings and weekends. It does not secure any 'community use' but supports a potential aspiration. Four of the seven facilities to be made available would only be available when not used by the school. In reality because of security issues any community use likely to be used outside school hours, no independent community use of 'school vegetable plots' is envisaged and no certainty that the 'community café' will be delivered and even if it were, it cannot replace the facilities lost. Pricing policy would not allow free use of the building independently. (469 responses in total).

j) Breaching equal access policies

The elderly, a growing section of the community, rely on the facility the garden centre provides. Barnet's Equality Policy, Putting the Community First, states 'Every resident and service user has equal access to high quality services that meet their needs. We recognise that there are some people who may need support in receiving this entitlement'. The Core Strategy emphasises the importance of 'integrated community facilities'. It is the Council's responsibility to not grant planning permission or assign a lease which does not preserve residents' entitlement to a community focal point that has been there over 80 years. (462 responses in total)."

21. On 17 October 2011 the Council had carried out further consultation. It wanted to obtain more information about the use of the garden centre by local people. Letters were now sent to 22 residents and 27 groups and service providers, most of whom had been identified by the Mill Hill Action Group as former users of the garden centre or as being particularly affected by its loss. This exercise included those in charge of places of worship, community service providers and managers of residential developments for the elderly. Among those consulted were Barnet College, Edgware Community Hospital, Barnet Adult and Children Services, and the operators of several day centres. A diversity monitoring questionnaire was sent out, which, among other things, asked those who received it to indicate their age group and what kind of disability, if any, they had. The replies received in this additional consultation were dealt with by the officers in paragraph 1.20 of their report:

“1.20. Additional Consultation

...

- 1.20.1. Nine replies were received from residents. One lives near Poets Corner, two live in the Marshall Estate, Hammers Lane, three elsewhere in Mill Hill, one in Edgware and one in Burnt Oak. Some residents visited a couple or up to five (one resident) times a week, others a number of times a month. Some visited to shop and all mentioned visiting to meet friends, for social interaction and some with a care worker. Some walked and others got the bus.
- 1.20.2. Twelve replies were received from groups, either submitted proactively or in response to the Council's letter ...
- The Good Neighbour Scheme received a number of comments from their clients, mainly single men and women in their 80's and 90's for whom the closure of the centre has greatly reduced their choice of day to day activities. Some of the clients drove to the garden centre, others got the bus and others walked or were pushed in wheelchairs.
 - A particular Darby and Joan Club from Burnt Oak with 25 members visited twice a year.
 - 2 local primary schools used the centre and considered it a valuable resource. Children walked to the centre from one school to buy seeds and plants and the staff were open to questions.
 - The Rainbow [Brownie] pack used the facility regularly to buy plants and see how things grow, the families of all the girls used the garden centre.
 - The Friends of 'The Willows' organised monthly trips to venues within 10 miles of Kingsbury and greatly enjoyed this garden centre.
 - Severely disabled and elderly residents from Henry Nihill House were taken on frequent visits. Had easy wheelchair access.
 - Winterstoke Gardens Freeholders Society – specially concerned with withdrawal of community use for the 11 of the residents who are elderly and disabled.
 - Lawrence Street Allotments – No longer have a trading hut and many members used Wyevale, it was only 5 minutes away. The Finchley Nursery is not so convenient or well-stocked. Also concerned about ability to assign a long lease to the garden centre, now the school, as Federation of Barnet Allotments is struggling to get a 38 years lease.
 - SENSE worker regularly took deafblind people to Wyevale as they could enjoy the touch, feel and smell of the flowers and the café was quieter than the one in the park.
 - Organiser of local club affiliated to Mencap considers garden centres and cafes a lifeline to mentally and physically disabled people.

- Director of Disability Action in Barnet supports retention of its amenity and states that the access and transfer infrastructure make the garden centre an ideal location for enhancement of clients' quality of life.

1.20.3. One reply was received from a service provider for people with autism. The letter stated that they visited the garden centre with users because it was a quiet environment where users could enjoy the sensory aspects of the centre. It was a stop-off point for a drink when walking to and from the park, the café in the park being frequented by young children and babies and hence too noisy. Also had a good disabled toilet and staff were very welcoming. Plants and gardening products were purchased for the garden of the day centre which users tended. They had hoped to look at work opportunity experiences for certain users. Although nothing compares with Wyevale for the sensory/therapeutic/calming and supportive aspects all a short walk away, the users did visit other local places [e.g.] coffee shops in Mill Hill and larger pubs in the area for meals.

1.20.4. A response was received from a manager in Barnet's Adult Social Care and Health Service, confirming that service users of some of Barnet's day centres visit garden centres to purchase plants etc. for gardening projects. The Flower Lane Autism Service used the Wyevale centre, either travelling on foot or by minibus. The author of the response stated that since there are other gardening facilities in the Borough within easy reach of all the Learning Disability services, she considers that there will not be a major impact on the lives of people supported."

22. In paragraph 2.3 of the report seven "main planning issues" were identified. These included "[the] Equalities Act [sic] and implications arising from the proposals".

23. In section 3 of the report, when dealing with "Green Belt issues", the officers acknowledged that the previous use of the site as a garden centre had generated traffic (paragraph 3.5). The site had been open seven days a week, "with no control on numbers of employees or customers". In "the intensity of use and associated activity" the proposed use of the site as a school "would be no more harmful than the lawful use of the site" (ibid.).

24. In section 4 of the report the officers considered the need for the school. They referred to a predicted shortfall of 22 forms of entry, equating to 660 reception places, by 2018/19 (in paragraph 4.3.2), a need for about 400 additional reception places in September 2012 and again in September 2013, and for at least 500 in September 2014 (in paragraph 4.3.3), a need for at least an extra 60 in the Hale, Mill Hill, Edgware and Totteridge area "from 2012 onwards" (in paragraph 4.1.3), and a need for at least 60 more places for children whose parents preferred a place in a Jewish school (ibid.). The officers noted that the Council was "fast running out of viable options for temporary additional classes in the areas of highest pressure" (in paragraph 4.3.6).

25. Alternative sites considered and rejected by the Trust were discussed (paragraphs 4.5.1 and 4.5.2). The officers noted (in paragraph 4.5.3) the Trust's contention that the garden centre site had been selected because it was "available at a more reasonable cost, is in a central location, easily accessible by public transport and close to local amenities, ... has good access and adjoins a public car park and Mill Hill park", and was "of adequate size and suitable for conversion to a primary school". Then (in paragraph 4.6) the officers said this:

"Given that the Council has identified [a] need for additional primary school places in this part of the borough and the Department for Education has accepted the proposal for a Jewish Free School in Mill Hill, officers consider that the principle of a new school is acceptable. Officers

consider that the proposal complies with Barnet UDP policy CS4 concerning the development of new educational facilities and emerging Development Management policy DM13.”

26. The officers considered the principle of the proposed change of use in section 5 of the report. They mentioned the site’s “extensive planning history, having previously been the Mill Hill Swimming Pool”, and the planning permission granted in 1987 for its use as a garden centre, subject to a condition restricting the sale of goods “to plant and related non-food material” (paragraph 5.1.1). They acknowledged that the garden centre had provided “a valuable resource to some members of the community”, and that the “particular groups affected” were “the elderly and people with disabilities” (paragraph 5.1.7). They went on to consider (in paragraphs 5.1.8 to 5.1.12) the availability and accessibility of “other places in the local area that can provide similar functions”, including another garden centre in Mill Hill, Mill Hill town centre, “which provides a variety of shops, cafes and restaurants that could serve as replacement refreshment facilities for that formerly provided at the Wyevale site”, “Mill Hill park, one of the borough’s premier parks”, and “for many people in the immediate area, similar facilities ... available elsewhere locally on foot or by bus to offset the loss of the particular range of goods sold and facilities available at the garden centre”. The officers acknowledged (in paragraph 5.1.13) “that the school can never provide the facilities that the garden centre provided in terms of all day use”, but noted that “future community use in line with that provided by many other schools and encouraged by national and local policy is part of the proposal.” The officers observed that in national policy local planning authorities are required, when determining applications for school development, to “attach very significant weight to the desirability of establishing new schools and to enabling local people to do so” (paragraph 5.2.4).
27. The officers went on to consider the community use of the new school. They noted that the Trust had said it was committed to ensuring that the school would be available for use by the local community (paragraph 5.3.1). They advised the committee (in paragraph 5.3.6) that the grant of planning permission would have to be subject to a legal agreement to ensure that an appropriate Community Access Plan was put in place, so that the school’s facilities would be made available outside school hours and, if possible, also during the day. The Community Access Plan would have to include details of the community uses and the hours proposed for them.
28. In section 6 of their report the officers considered issues relating to transport. They considered (in paragraphs 6.2.4 to 6.2.6) the Trust’s Transport Statement and the School Travel Plan in the light of the surveys of staff and pupil journeys to and from the school on its temporary site at 80 Daws Lane, including the results of a questionnaire of parents in November 2011. They also took into account the surveys produced by local residents (paragraphs 6.2.7 and 6.2.8). They advised that all applicants for permission to develop a school are required to produce a school travel plan (paragraph 6.2.1). They concluded (in paragraph 6.2.11) that the data presented to the Council provided “a sound basis for the [Trust’s School] Travel Plan”. They considered the likely effect of traffic generated by the school on the local road network. They compared the survey data originally submitted by the Trust with the more recent information about patterns of travel to and from the school on its temporary site (paragraphs 6.2.8, 6.6.1 and 6.6.2). The material they had before them in the Transport Statement enabled them to conclude (in paragraphs 6.6.3 to 6.6.5) was that the school would not cause “an unacceptable level of congestion on the public highway”. They had visited the school themselves to observe how well Daws Lane was coping with its traffic (paragraph 6.6.3), and they took into account the results of their own surveys of traffic generated by similar schools in the area (paragraphs 6.7.1 to 6.7.5). They considered the likely effects of the development on car parking in the local area, having regard to surveys

undertaken in July and November 2011 (paragraphs 6.8.1 to 6.8.11). In view of the assessment in the Transport Statement they concluded:

“6.12.6 ... [The] proposed school does not result in an overall intensification of traffic movement compared to the previous use of the site. Officers therefore consider that, whilst there will be peaks of traffic activity, the proposed school would not result in unacceptable levels of congestion on the local highway network.

6.12.7 As with all schools it is recognised that there is an impact on-street during school drop-off and collection times. On balance, in light of the planned changes to the council car park and in conjunction with the [School Travel Plan] and other mitigation measures, which will need careful and thorough monitoring by the school and the council it is considered that the traffic impact for this one-form entry proposal can be accommodated on the existing highway network.”

29. The officers told the committee that if planning permission were granted for the development the section 106 obligation would have to provide for possible adjustments to the parking restrictions on local roads, alterations to the pedestrian refuge at the junction of Daws Lane and Wise Lane, and a contribution of £5,000 for the monitoring of the School Travel Plan.
30. Section 7 of the officers’ report was devoted entirely to the Equality Act 2010. The officers began by referring to the general duty on public bodies set out in section 149 of the Act, which, they said, “requires the Council to pay regard to the need to eliminate discrimination and promote equality with regard to those with protected characteristics such as race, disability, and gender including gender reassignment, religion or belief, sex, pregnancy or maternity and foster good relations between different groups when discharging its functions”.
31. Under the heading “Equality Duties” (in paragraph 7.1 of the report) the officers advised the members that these duties require an authority to demonstrate that any decision it makes is reached “in a fair, transparent and accountable way, considering the needs and the rights of different members of the community”. This was to be achieved by “assessing the impact that changes to policies, procedures and practices could have on different equality groups”. It was, the officers said, “an opportunity to ensure better decisions are made based on robust evidence”. They went on (in paragraph 7.1.1) to set out in full the relevant provisions of section 149(1), (3), (4), (5), (6) and (7).
32. In paragraphs 7.2.1 to 7.2.7 the officers explained how the Council had gone about consultation. The members were told that letters had been sent to more than 3,500 local residents and commercial occupiers, inviting them to make any comments they might have within a consultation period of five weeks. The responses had been broken down geographically. Some respondents had included their age and had said whether or not they considered themselves to have a disability. During the consultation period – on 21 November 2011 – officers had met two residents who had asked for such a meeting, and had heard their concerns about the loss of the garden centre and the proposed development. The officers explained again what had been done in the additional consultation exercise. This further consultation had been based on a questionnaire in which those consulted were asked why they had visited the garden centre, how many visits they had made to it, on average, each month, when during the day or week they had visited it, how they had travelled there, and how long the journey took. The consultation letter had been accompanied by a “diversity monitoring questionnaire to enable the views of different sections of the community to be monitored”. The letters of support received in the consultation process had also been analysed according to geographical area. In paragraph 7.2.6 of the report the officers said this:

“Following concerns raised during the consultation process in relation to the previous application on this site, it became clear that for many residents the loss of the garden centre represented the loss of a local facility that they used socially to meet friends and interact with the local community as well as for shopping.”

33. The officers had therefore visited the local area to gather information about “alternative facilities available to meet these functions”.
34. They then proceeded (in paragraphs 7.3.1 to 7.3.4) to analyse the consultation responses, having reminded the members that a record of the responses had been included in section 1, which dealt with “Material Considerations”. The officers recorded the proportion of respondents in the Poet’s Corner area who had identified themselves as elderly or disabled, and the corresponding figure for the wider NW7 postcode area. They then set out their analysis of the representations submitted by or on behalf of people who had identified themselves, or a family member or someone they cared for, as being personally affected by the loss of the garden centre. Having analysed these responses, together with those received in the additional consultation exercise, the officers said it was clear that the main reasons why people had visited the garden centre and valued it were “ease of parking”, “proximity for walking”, “quiet environment for people with certain needs”, “supportive staff”, “ability to buy gifts, etc. without having to cross the A41 to Mill Hill”, “ability to buy plants without having to drive or get the bus further afield”, and “café a pleasant place to meet friends”. The officers also considered the letters of support. They identified the main reasons given for supporting the Trust’s proposals as being the educational benefits of the new school, the provision at the school of a “wider community facility”, the suitability of this site for a school, the fact that the garden centre had no longer been economically viable, and that there had been less traffic since the garden centre closed.
35. In paragraphs 7.4.1 to 7.4.7 the officers addressed “[the] implications of the proposals”. They noted from many of the objection letters received in the course of consultation on this and the previous application that the garden centre had been used by “vulnerable sections of the community, notably the elderly and disabled groups”. They mentioned, in particular, the Autism Service in Flower Lane. The operator of the garden centre had “engaged with” local schools and children’s groups, making its facilities available to them. Many of the objectors had referred to the “excellent level of service” provided by the staff at the garden centre, and how “accommodating and helpful” they had been to those who used it. Many had mentioned the “unique nature of the site”, as an “important community facility” for local people, particularly the elderly and disabled who found it difficult to use public transport to get to similar facilities elsewhere. The officers said their analysis of “the individual consultation letters and responses to the targeted consultation” had shown that about 124 residents had written to say they were “particularly negatively affected by the loss of the garden centre facility”.
36. The report continued with this:
 - “7.4.4 Clearly a significantly greater number of residents have concerns about the loss of the garden centre on groups with protected characteristics.
 - Notwithstanding the views expressed by those objecting to the proposals, officers consider that although the garden centre provided a much-loved local facility for a very large number of local residents, there are other places in the local area that can provide similar services and meet some of the same needs[.]

- Whilst recognising that it does not have the same café or toilet facilities as the former Wyevale centre, officers note that there is another garden centre in Mill Hill which sells plants, garden and aquatic products. It is accessible by bus from Daws Lane along The Ridgeway[. However,] officers accept there is a 5-10 minute walk from the bus stop and the Council accepts that it is not as accessible on foot as the Wyevale garden centre. The access road to the garden centre itself is via a rough surfaced highway without a pavement.
- The Wyevale Site is within a 5 minute walk of Mill Hill town centre which is one of the borough's thriving town centres providing a variety of shops, cafes and restaurants. There are approximately 7 cafes, various shops selling cards and gifts as well as numerous other retail outlets. Officers recognise that some of these premises may not be as independently accessible to those with mobility problems, particularly wheelchair users, but there are a range of premises available.
- The Wyevale Site is adjacent to Mill Hill park, one of the borough's premier parks. The park itself has an indoor café, toilets and [children's] play area as well as sporting facilities. Again, it is recognised that the park does not provide an all-weather facility on the same scale as the former garden centre and that the café may not be as appropriate for certain users as the garden centre. However, in terms of accessibility the Park is located next to the same car park customers of the former garden centre would have used. There is a second car park within the park itself.

7.4.5 In this case, officers accept that there has been impact from closure of the garden centre on particular individuals, particularly those elderly people or disabled people who cannot use public transport or who made use of the garden centre socially as a place to meet friends or interact with the wider community. Accordingly significant weight must be placed on those impacts when considering the merits of the planning application.

7.4.6 However, set against the identified impacts on groups with protected characteristics are the facts that:

- i) the site was run prior to its closure in September 2011 as a commercial shop and the leasehold is privately owned[;]
- ii) there are positive benefits of the proposal in terms of the provision of a school which meets the identified needs of children as set out elsewhere in this report[; and]
- iii) [the] government has stated a policy presumption in favour of the provision of state-funded schools and for which there is strong policy support. The draft National Planning Policy Framework requires LPAs to attach very significant weight to the desirability of establishing new schools and to enabling local people to do so.

7.4.7 In making this recommendation in respect of the planning application, officers have given weight to the impact that the proposal would have on the identified protected groups. However the harm is considered to be outweighed by other considerations. The Council is required to give consideration to the mitigation of the impact. In this case the garden centre has closed. It is a commercial site and the Council has no planning control over the closure of the garden centre. Further it is considered that many of the activities that people carried out in the garden centre can and will be carried out in the other local facilities identified above. As such, officers consider that the change of use to a school will have adverse impacts but these will not be as significant as local people fear, given that the activities carried on at the centre by the identified groups can be carried on elsewhere in nearby locations. Having regard to these matters and, importantly given the identified and compelling need for the school and the positive outcomes through providing more school places in an area of need for the children whom the School would accommodate, it is officers' recommendation that permission be granted."

37. That assessment was drawn into the final section of the officers' report, section 11, where the officers referred again to the particular impact of the loss of the garden centre on "the elderly and those with a disability" (paragraph 11.4), and concluded that, "having paid due regard to the need to eliminate discrimination and promote equality with regard to those with protected characteristics, ... the benefits to the wider community of the provision of new educational facilities outweighs the adverse impact on those with protected characteristics" (paragraph 11.6).
38. Shortly before the committee met the officers prepared an addendum to their report, in which they summarized and commented upon the responses to the further consultation. Among the points considered was the contention the school would not be available to the whole community. The officers acknowledged that the Trust's "community use proposals will not be the same as the facilities offered by the former garden centre", and said that "the facilities available will be agreed within the Community Access Plan". Addressing the objection made by Action Mill Hill, the officers accepted – once again – that "the future community use of the school will not replicate the facilities of the garden centre and this has been taken into consideration".

The section 106 obligation

39. On 29 March 2012 the Council and the Trust entered into an agreement under section 106 of the Town and Country Planning Act 1990. The agreement provided for the payment of financial contributions towards the cost of improvements to the highway and the extension of the existing controlled parking zone – the "Highway Contribution". It also provided for the production of a "School Travel Plan". In clause 3.7 of the agreement the Trust committed itself to submitting to the Council "a draft Community Access Plan", and, in clause 3.8, to revising the draft Community Access Plan to incorporate any comments made by the Council within six weeks of its submission. The Community Access Plan was defined as:

"... A report detailing the following information:

- (a) How the school will ensure that the site is available for community use.
- (b) Details of the facilities that will be available, pricing policy, hours of use, access by non-school users, management responsibilities, timetable for implementation of the Community Access Plan.
- (c) The Plan shall set out how members of the wider community have been involved in the drafting of the Plan and how they will continue to be involved in the management and adaptation of the Plan.
- (d) Details for a mechanism for review.
- (e) Details of the timetable for review."

The Council's decision notice

40. The decision notice granting permission for the Trust's development stated the reasons for the approval of the application. These were the same as had been recommended by the officers in their report. Thus they included the statement that the development would have "no significant impact on the amenities of neighbouring occupiers and can be accommodated on this site without significant adverse impact on local roads and the highway network", and the statement that "... having paid due regard to the need to eliminate discrimination and promote equality with regard to those with protected characteristics, officers conclude that ...

the benefits to the wider community of the provision of new educational facilities outweighs [sic] the adverse impact on those with protected characteristics.”

41. The planning permission was conditional. Three of the conditions – conditions 3, 4 and 9 – are relevant to issues arising in these proceedings. Condition 3 states:

“The premises ... shall be used only by the Etz Chaim Mill Hill Jewish Free School and associated community uses as set out in the Community Access Plan and for no other purpose (including any other purpose in Classes D1 or D2 ...) ...”.

Condition 4 states:

“The use of the premises for the purposes hereby permitted shall only take place between the hours of 7.00 [a.m.] and 9.00 [p.m.] on weekdays, and ... between 9.00 [a.m.] and 7.00 [p.m.] on Saturdays and Sundays or as agreed in the Community Access Plan.”

Condition 9 states:

“Two months prior to the school opening a School Travel Plan that meets the current Transport for London criteria as detailed in the document ‘What a School Travel Plan should contain’ shall be submitted to and approved in writing by the Local Planning Authority. The documents shall set out the school’s transport policy to incorporate measures to reduce trips to school by the private car and encourage non car modes such as walking, cycling and public transport. Details of the start and finish times for pupils shall also be incorporated in order to minimise conflict on the local highways network. The scheme as submitted shall be approved in writing by the local planning authority and the use shall be carried out in accordance with the School Travel Plan as approved.

The School Travel Plan should include the appointment of a School Travel Plan Champion, measurable targets and a clear action plan for implementing the measures. The School Travel Plan should be reviewed annually in accordance with the targets set out in the Plan.”

The deed of variation

42. On 20 July 2012 the Trust and the Council entered into a deed of variation of the section 106 agreement, under section 106A of the 1990 Act. They agreed to delete clauses 3.7 and 3.8 of the original agreement and to substitute for those clauses the following provisions:

“ 3.7 At least three months prior to the date of first Occupation of the Development the Owners covenant to submit for approval by the Council the Owners’ proposed draft of the Community Access Plan and to revise the draft Community Access Plan to incorporate any reasonable comments made by the Council within four weeks of receipt of the Council’s comments prior to the date of first Occupation of the Development and for the avoidance of doubt the community uses to be developed in the Community Access Plan may include any or all of the following:

3.7.1 the establishment of a social community centred around the Development (which may include the setting up of [a] University of the Third Age group);

3.7.2 the creation of the Josiah Wedgwood garden on the Land (with full disabled access and therapeutic space); and

3.7.3 the use of the Development as a venue for local groups and events.

3.8 The Owners further covenant that they shall:

3.8.1 at all times implement the terms in which the Community Access Plan is approved by the Council by the dates or within the time limits set out within such plan pursuant to clause 3.7 in connection with the carrying out completion bringing [into] use and occupation of the Development.

3.8.2 on every anniversary of the date on which the Development is first brought into use disclose to the Council the following information in order that the Council may review the implementation and content of the Community Access Plan:-

- (i) facilities that have been made available for use by the local community in the preceding 12 months and the hours of such use and any consideration charged in relation thereto

...

3.8.3 In the event that the Council approves any proposed amendment or modification to the Community Action Plan by the Owners ... the Owners shall:

3.8.3.1 At all times implement the terms in which the Community Access Plan is so amended or modified in connection with the ongoing use and occupation of the Development.

...”.

The issues in the claim

43. The claim now raises seven issues:

- (1) whether the Council lawfully discharged its duty under section 149 of the Equality Act 2010;
- (2) whether the section 106 obligation entered into by the Trust on 29 March 2012 was adequate to achieve what the Council sought from it;
- (3) whether conditions 3 and 4 of the planning permission are unlawful;
- (4) whether the extant temporary planning permission for school use on the site was an irrelevant consideration for the Council to take into account when making its decision, and whether the Council erred in failing properly to consider alternative sites for the development;
- (5) whether the Council failed to consult as it ought to have done on the application for planning permission;
- (6) whether the Council failed to consider the likely effects of the development on car parking and traffic; and
- (7) whether the Council failed to provide adequate reasons for granting planning permission.

Issue (1): section 149 of the Equality Act 2010

The statutory provisions

44. All three parties agree that the public sector equality duty in section 149 of the Equality Act 2010 was engaged in the Council's determination of the Trust's proposal.

45. Section 149(1) of the 2010 Act provides:

“A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”

46. Under section 4 of the Act “protected characteristics” include “age” and “disability”, which are further defined, respectively, in sections 5 and 6.

47. Section 149(7) provides that “age” and “disability” are “relevant protected characteristics” under section 149(1).

48. Section 149(3) provides:

“Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.”

49. Section 149(4) provides that the steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

50. Section 149(5) provides:

“Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

- (a) tackle prejudice, and
- (b) promote understanding.”

Submissions

51. The submissions of Mr Lopez on this issue, which elaborated a good deal on the pleaded claim, can be summarized as follows.
52. First, given the nature and volume of objection from the disabled and elderly and those responsible for their care, this is one of those cases in which the due regard duty was very high (see *R (W) v Birmingham City Council* and *R (M, G and H) v Birmingham City Council* [2011] EWHC 11487 (Admin), at paragraph 151). But the Council had not appreciated this. Mr Lopez acknowledged that there was no obligation on the Council to conduct a formal equality impact assessment. Inherent in the provisions of section 149, however, was a duty to carry out an informal assessment. It was not for the claimant to explain to the Council what it ought to have done to comply with the requirements of section 149. In his own representations on the proposal he had not been trying to do that, but one had some indication there of the extent of inequality in this case. The greatest impact suffered by the disabled and the elderly in this case would be their isolation and their not being able to meet others in the community. No facilities as good, or as near, as the garden centre would compensate for its loss. Some would suffer more than others.
53. Secondly, Mr Lopez submitted, there is no material distinction in the relevant jurisprudence between the planning cases and those concerning the withdrawal or reduction of services by local authorities. The essentials are the same. Mr Lopez relied to the six principles identified by the Divisional Court in *R (Brown) v Secretary of State for Work and Pensions* [2009] PTSR 1506, and, in particular, the observation made by Aikens LJ, giving the judgment of the court in that case (at paragraph 31):

“... [There] is ... a notable distinction between disability and other targets of equality legislation such as race or sex, because ... disability can be in numerous different forms. Different steps are needed to have regard to the needs of the mentally disabled from those of the physically disabled. The needs of a blind man are different from one who is deaf. Furthermore, disability comes in varying degrees.”

To similar effect, Mr Lopez suggested, were observations made by Dyson LJ in his judgment in *R (Baker) v Secretary of State for Communities and Local Government* [2009] PTSR 809, the rationale of the Court of Appeal’s decision in *R (Harris) v Haringey London Borough Council* [2010] EWCA Civ 703, and several passages in the decision of Walker J in the Birmingham case (in particular at paragraphs 151 and 172 to 176), the decision of Moses LJ in *R (Kaur) v Ealing London Borough Council* [2008] EWHC 2062 (Admin) (in particular at paragraph 23) and the decision of HHJ Milwyn Jarman QC, sitting as a deputy judge of the High Court, in *R (Boyejo) v Barnet London Borough Council* [2009] EWHC 3261 (Admin) (in particular at paragraphs 15, 59 and 63).

54. Thirdly, the Council ought to have applied each of the three “subset duties” in section 149 separately, for each of the three “subset groups” representing the main types of disability – physical, mental and learning – and, indeed, in greater detail still by looking at various forms of disability within those three groups, such as paraplegia, Tourette’s syndrome and autism. This ought to have included an appraisal of the alternative facilities available locally, prepared at the level of detail shown in a document produced by Ms Samuelson as an exhibit to her first witness statement – “Analysis of available facilities and pavement space in the Broadway” – in which, said Mr Lopez, the distinction between different disabilities was implicit. The Council should have investigated the likely impacts on those with protected characteristics no less intensely than this. Only with a much deeper understanding than it had of the particular

effects on people with particular disabilities could it have properly performed its equality duty when determining the Trust's application for planning permission. The generalizations in section 7 of the report give one no confidence that the Council had really thought about each of the three needs in section 149(1). The reasons for granting planning permission stated in the decision notice did not articulate a conclusion on the need in section 149(1)(c), and the analysis lying behind those reasons – though not incorporated into them – did not distinguish between the needs in subsections (1)(a) and (1)(b) (to eliminate discrimination and to promote equality).

55. Fourthly, Mr Lopez submitted, the Council's consultation was partial and incomplete. The letter sent by the Council on 17 October 2011 to those it had selected as the target for its further consultation said nothing about equality as such. Although the "diversity monitoring questionnaire" attached to that letter had a section in which the consultee was asked what his disability was, this was not enough to gather the information the Council should have had before it. The Council failed to ascertain the needs of the people with protected characteristics who had used the garden centre and the benefits it had offered for them. It had failed to ascertain the constraints affecting those users of the site. And it had failed to ascertain the impacts upon those individuals, allowing for the other facilities they could use instead. These three stages had to be gone through before the Council could arrive at the conclusions it needed to draw if it was to discharge the equality duty. The benefits of the garden centre for the elderly and the disabled had been underestimated. The constraints had not been fully revealed either by the Council's original consultation, or by the targeted exercise that came later. That exercise was patently inadequate. It did not reach everybody it should have reached, and it did not serve to reveal the entire range of relevant objection. As to the impacts, the Council had not focused on the shortfall in facilities like the garden centre that were available and accessible to those with protected characteristics.
56. Fifthly, the assessment presented by the officers in their report, and accepted by the members, was inadequate. It fell short of the rigour required. It was neither sufficiently precise nor sufficiently robust. It did not present to the members sufficient information on the scale of the needs of disabled and elderly people, the demographic characteristics of those who had used the educational and recreational facility on the site when it was a garden centre, and the extent of the area within which those people lived. It did not touch on the whole range of relevant needs, benefits, constraints and impacts. Isolation was not the only hardship that those affected would suffer. As well as this, the Council should have thought about the difficulties those people would face in getting to facilities elsewhere, their mobility, whether suitable transport was available to them, how stimulating for them the other facilities might be, and what they could do or enjoy once there. The officers did not express any proper judgment on the use of the site in the future by the local community, and the provision for this remained speculative when planning permission was granted.
57. And sixthly, the Council's decision was vitiated by factual error. The only consideration the officers had counted against the harm to those with protected characteristics was the need for more school places, but the Council had misdirected itself by accepting that such a need existed. Because there was no such need the balancing exercise conducted by the officers was false. This submission was based on Ms Samuelson's second witness statement, in which (at paragraphs 24 and 25) she seeks to show that the analysis of educational need set out by the Council's officers in section 4 of their report was factually wrong.
58. The submissions made by Mr Alexander Booth for the Council and Mr Paul Brown QC for the Trust can be summarized together.

59. First, there are two basic misconceptions in the claimant's argument on this issue: (1) that the lawful use of the site was, or included, use for a community purpose, and that such use could be secured and protected by the Council's use of its planning powers, and (2) that if the Council had performed its duties under the Equality Act 2010 as it should have done it would have had no choice but to refuse planning permission for the Trust's development. The lawful use of the site at the time when the planning permission under challenge was granted was not for a community use within either Class C2 or Class D1 of the Town and Country Planning (Use Classes) Order 1987, but a retail use within Class A1. There are no conditions attached to the garden centre permission requiring the operator to provide or retain any community facility on the site. The planning permission granted on the Trust's application is for Class D1 use and is subject to a section 106 agreement that will ensure the school facilities are made available for use by the local community. The site had been vacant for some time when the Council came to make its decision. The previous owner had decided to sell its interest to the Trust. No community facility was being closed. There was no community facility there. And even if the planning permission was quashed and the Trust's proposal abandoned, it could not be assumed that Class A1 use would resume, let alone resume in the form it had taken when the site was operated as a garden centre. Indeed, as Mr Dawson has explained in his witness statement, the Trust had no intention of selling the site to a retail operator even if this claim for judicial review should succeed. It would persevere in seeking planning permission for the development.
60. Secondly, as the authorities make clear, the Council's equality duty was not to achieve the objectives in section 149(1), but to have "due regard" to the need to achieve them. Even in cases where the duty is to pay very high regard to the section 149 objectives, the considerations raised by the Equality Act 2010 are not themselves decisive. A public authority is entitled to balance those considerations against countervailing factors, and the weight to be given to those countervailing factors is for it to decide.
61. Thirdly, submitted Mr Booth and Mr Brown, the argument that the Council failed lawfully to carry out its duty under section 149 is untenable. On the contrary, the Council not only had regard to the duty, but had due regard to it. None of the principles in the relevant jurisprudence were ignored or misapplied. The Council complied with the six general principles recognized by the court *Brown*, so far as those principles were relevant. It understood the scope and depth of the equality duty perfectly well, and performed it appropriately in the circumstances of this case. It was not obliged to undertake a formal equality impact assessment (see *R (Deborah Domb) v. London Borough of Hammersmith and Fulham Council* [2009] EWCA Civ 941, per Rix LJ at paragraph 52). The assessment it did undertake was at least sufficient to discharge its equality duty under section 149. It had consented to judgment in the proceedings brought against the planning permission it had granted in September 2011, conceding that on that occasion it had not discharged its duty under section 149. This had served to sharpen its focus on the requirements of that duty. It instructed eminent leading counsel to review the officers' report on this application and to attend the committee meeting at which the application was considered, so that she could advise the members on this matter if the need arose. Substantial passages in the officers' report – in particular, but not solely, section 7 – were devoted to the considerations germane to the equality duty. Neither statute nor authority requires the level of detailed assessment for which Mr Lopez contended. The officers referred to section 149, set out its relevant requirements, and discussed their implications in the light of the facts. Both they and the members understood the nature and extent of the educational and recreational facilities that the site had offered to disabled and elderly people when it was being used as a garden centre. This is clear, for example, from paragraphs 1.14 and 1.20 of the report. The information assembled and

organized by the officers was used by them in the advice they presented to the members. The Council's reasons for granting permission refer explicitly to the equality duty. It had acknowledged the impact the loss of the garden centre would have on the elderly and disabled, in the light of the officers' advice that this was a matter to which members should give significant weight.

62. Fourthly, there can be no sensible criticism of the Council's balancing exercise. The Council had to take into account – and did – that the refusal of planning permission for the Trust's development would not, in fact, bring the garden centre back. As the officers reminded the members, the Council was under a statutory duty to make adequate provision for education for children within its area. There was evidence before the committee of a pressing need for additional schools in Barnet generally, and in Mill Hill in particular. There was also clear evidence of a need for a Jewish school. In national policy, in the draft National Planning Policy Framework, "very significant weight" had to be given to the desirability of establishing new schools. The Council knew this. It was entitled to have regard to the Trust's Community Action Plan for the shared use of school facilities by the community, in accordance with development plan policy. The members did not assume that this would replicate the facility that had been lost when the garden centre closed. The officers advised them that it would not. Other local facilities available to the disabled and the elderly were discussed in the report, and their weaknesses identified. The claim is truly an attack on the Council's exercise of its planning judgment. Far from being a cogent challenge to the Council's performance of its equality duty, this is an attempt to ventilate again the claimant's and others' objections. That is not permissible in a claim for judicial review.
63. And fifthly, the Council did not err in law in finding a need for more school places. This is a new ground, not originally pleaded. And it has no merit. It cannot be reconciled with established principles in the authorities relating to mistake of fact. The Council made no error. In the documents on which the officers had relied in their analysis it had been assumed that the Trust's school was operating, so that any outstanding demand for places would only have been increased had this not been so.

Discussion

64. In my view the Council did all that was required of it in this case if it was to discharge its duty under section 149 of the Equality Act 2010. I accept the submissions of Mr Booth and Mr Brown to this effect, and reject the argument advanced by Mr Lopez – not only the submissions originally pleaded on the first ground of the claim, but also the written and oral submissions in which that ground evolved.
65. The relevant jurisprudence is clear and not controversial.
66. As Dyson LJ said in *Baker* (in paragraph 31), the duty is not a duty to achieve a result, but to have due regard to the need to achieve the statutory goals. This distinction, said Dyson LJ, is "vital". The failure of a decision-maker to make explicit reference to the relevant statutory provision (in that case section 71(1) of the Race Relations Act 1976) would not determine whether the duty under the statute had been performed, for this "would be to sacrifice substance to form" (*ibid.*, paragraph 36). Dyson LJ went on to say this:

"37 The question in every case is whether the decision-maker has *in substance* had due regard to the relevant statutory need. Just as the use of a mantra referring to the statutory provision does not of itself show that the duty has been performed, so too a failure to refer expressly to the statute does

not of itself show that the duty has not been performed. ... To see whether the duty has been performed, it is necessary to turn to the substance of the decision and its reasoning.

38 Nevertheless, although a reference to section 71(1) may not be sufficient to show that the duty has been performed, in my judgment it is good practice for an inspector (and indeed any decision-maker who is subject to the duty) to make reference to the provision ... in all cases where section 71(1) is in play. In this way, the decision-maker is more likely to ensure that the relevant factors are taken into account and the scope for argument as to whether the duty has been performed will be reduced.”

67. The court must consider whether due regard has been paid to the equality duty, and not simply whether the failure to have due regard to that duty was *Wednesbury* unreasonable (R (*Child Poverty Action Group*) v *Secretary of State for Work and Pensions* [2011] EWHC 2616 (Admin), at paragraphs 70 to 72). “Due” regard means, as Dyson LJ said in *Baker* (at paragraph 31), “the regard that is appropriate in all the circumstances”. The circumstances include “the importance of the areas of life of the members of the disadvantaged ... group that are affected by the inequality of opportunity and the extent of the inequality” and “such countervailing factors as are relevant to the function which the decision-maker is performing” (ibid.).

68. As Aikens LJ said in *Brown* (at paragraph 35), “the general duty [in section 49A(1) of the Disability Discrimination Act 1995] is expressed in broad and wide-ranging terms of the needs or targets to bring about a change of climate, but the section is silent as to how it should be done”. He emphasized (at paragraph 82) the need for the decision-maker to “pay regard to any countervailing factors which, in the context of the function being exercised, it is proper and reasonable for the public authority to consider”. What these factors are in a particular case will depend on the function being exercised and all the circumstances that bear upon it. Aikens LJ added:

“... Clearly, economic and practical factors will often be important. Moreover, the weight to be given to the countervailing factors is a matter for the public authority concerned, rather than the court, unless the assessment by the public authority is unreasonable or irrational ...”

69. Where disabilities are concerned, the duty encompasses due regard being given to “the *need* to take steps to gather relevant information in order that [the public authority] can properly take steps to take into account disabled persons’ disabilities in the context of the function under consideration” (*Brown*, at paragraph 85). The court suggested (in paragraphs 90 to 96) six principles applying to the discharge by a public authority of its duty to have due regard to the goals set out in section 49A(1) of the Disability Discrimination Act 1995. First, the public authority must be made aware of its duty to have due regard to the identified goals (paragraph 90). Secondly, the due regard duty must be fulfilled before and at the time that a policy affecting people with disabilities is being considered by the public authority (paragraph 91). Thirdly, the duty “must be exercised in substance, with rigour and with an open mind”. It must be “integrated within the discharge of the public functions of the authority”, which is “not a question of “ticking boxes”” (paragraph 92). Fourthly, the duty is not delegable (paragraph 94). Fifthly, the duty is a continuing one (paragraph 95). And sixthly, it is good practice for public authorities to keep an adequate record “showing that they had actually considered their disability equality duties and pondered relevant questions” (paragraph 96).

70. Performance of the due regard duty must be an integral part of the formation of the decision, not merely the justification for the making of that decision (see *Kaur*, at paragraph 24).

Because the performance of the duty is a matter of substance, to be judged according to the facts of the case in hand, there must be enough information to enable the necessary balancing exercise to be carried out, and that information must be before the decision-maker (see *Child Poverty Action Group*, at paragraphs 70 to 76). In *Brown* it was held that the underlying objective of the general duty under section 49A(1) of the 1995 Act was “to create a greater awareness on the part of public authorities of the need to take account of disability in *all* its forms and to ensure that it is brought into “the mix” as a relevant factor when decisions are taken that may affect disabled people” (paragraph 30).

71. The decision under challenge in this case is a planning decision, the decision of a local planning authority to approve a scheme of development. It is not a decision of a public body to withdraw or reduce a particular service, such as the court had to consider, for example, in the Birmingham case, which concerned the provision made for disabilities in the then current budget of Birmingham City Council. Much of the case law is concerned with decisions of that kind. This is not to say that the public sector equality duty is less onerous in a planning case than it is in others. It is not. But in such a case the circumstances in which the authority’s performance of the duty has to be scrutinized will inevitably be different.
72. What were the circumstances here? This was not a case of direct discrimination. It is common ground that the Council was not obliged to conduct a formal impact assessment. The facility whose loss is said to have harmed the interests that the section 149 duty is meant to protect had already gone by the time the Council’s decision was made. The granting of planning permission did not cause that loss. The change of use applied for was not from a permitted or lawful use for any community purpose within Class D1 (“Non-residential institutions”) or Class D2 (“Assembly and leisure”), or within Class A3 (“Restaurants and cafes”). The garden centre was not going to be ousted by the school. Its fate was not settled when the Council approved the Trust’s development. It had already closed. It was not forced to do so by the Trust. It was unviable. It is not going to be reinstated if the planning permission for the school is quashed. The site has been sold on a long lease to the Trust. Even if the Trust were to abandon its project – and there is no evidence to suggest that it will – there seems to be no prospect of another garden centre being opened on the site.
73. To discern the Council’s thought process in applying itself to its duty under section 149 one has to look at two documents: the decision notice issued on 30 March 2012 and the planning officers’ report. The Council has not produced to the court any minutes of the committee’s deliberations on 31 January 2012. And the advice given to the Council by Ms Lieven QC has not been disclosed.
74. It cannot be said that the Council failed to have regard to the section 149 duty, or that it was unaware of the exact terms in which that duty is framed. In paragraph 2.3 of their report the officers acknowledged that the implications of the Trust’s proposal for the Equality Act 2010 represented one of the main planning issues on which the members had to concentrate in making their decision. The relevant statutory provisions were not only brought to the committee’s attention, they were set out in full in paragraph 7.1.1 of the report. Thus the members were made conscious of the task they faced, and this was done in the precise terms in which that task was set for them by statute.
75. One can see straight away, therefore, that this case is very different in its facts from *Harris*. In *Harris* neither the committee report nor the minutes of the meeting at which the decision to grant planning permission was made referred specifically to section 71 of the 1976 Act or the obligations it imposes, nor was there any reference in those documents to the substance of

the duties (see paragraph 22 of the judgment of Pill LJ). It was submitted for the authority that a decision-maker may be conscious of its duties even if it does not know their source, that the authority's own adopted policies in its UDP had required it to think about the likely impacts of the development on the ethnic minority communities affected by it, and that the considerations arising under section 71 merged with those raised by the development plan. But this, the Court of Appeal held, was not enough. Pill LJ said he could see no "focus on the substance of the section 71 duty when the complex issues to be decided by the council's committee are set out and debated" in the committee report (paragraph 27 of his judgment). He amplified this conclusion and its significance in paragraph 40 of his judgment:

"Not only is there no reference to section 71 in the report to committee, or in the deliberations of the committee, but the required "due regard" for the need to "promote equality of opportunity and good relations between persons of different racial groups" is not demonstrated in the decision making process. "Due regard" need not require the promotion of equality of opportunity but, on the material available to the council in this case, it did require an analysis of that material with the specific statutory considerations in mind. It does not, of course, follow that considerations raised by section 71(1) will be decisive in a particular case. The weight to be given to the requirements of the section is for the decision maker but it is necessary to have due regard to the needs specified in section 71(1). There was no analysis of the material before the council in the context of the duty."

76. In *Boyejo*, although "diligent reading of the documentation available to the decision makers" would enable one to find "references to disabilities", it was not possible, said the judge (at paragraph 59), "to discern from the reports or documentation or the decisions themselves that due regard was had ... to the need to take account of disabled persons' disabilities even where that involves treating disabled people more favourably than other persons." The authorities in that case, the judge held (at paragraph 63), had considered the impacts of changes in the provision of services on "residents as a group, but neither authority ... had any or sufficient regard to such an impact upon those residents with disabilities as a separate group or to the need to recognise that the taking into account of those disabilities may involve treating disabled persons more favourably than others". In this case, by contrast, the court has been invited to hold that the equality duty was not fulfilled even though the officers' report included a section devoted to it and the decision notice itself acknowledged the likely effects on the elderly and the disabled.
77. In the circumstances of this case the Council did not have to go further than it did to discharge the duty. In my opinion Mr Lopez exaggerated what was required. I do not accept that an assessment as elaborate and intensive as he suggested was called for. I do not believe it was necessary here for the Council, when having regard to the statutory needs, to go beyond the relevant categories of "protected characteristics" in section 4 of the 2010 Act – namely "age" and "disability" – and to disaggregate the several types of disability by giving separate treatment to physical, mental and learning disabilities, or to complicate the exercise further by dividing one type of physical disability from another, and so on. So – to give two examples – the Council was not, in my view, obliged to consider how restricted in their mobility individual objectors were, or the different types of autism represented among those who had opposed the development. That would have been unduly onerous, and far more than section 149 required in this particular case. No support for such an approach in the making of a planning decision of this kind is to be found in the authorities, and no good purpose would have been served by it.

78. Mr Lopez highlighted some of the passages in Walker J's judgment in the Birmingham case. Walker J listed (in paragraph 151 of his judgment) a series of propositions that the parties had agreed as to the provisions of section 49A of the 1995 Act. These included:

“...
v. The duty requires the circumstances of the full range of disabled people to be taken into account and may require certain groups of disabled people to be prioritised, for example on the basis that they experience the greatest degree of exclusion;
...
vii. “Due regard” means specific regard by way of conscious approach to the specified needs;
...
x. In a case where the decision may affect large numbers of vulnerable people, many of whom fall within one or more of the protected groups, the due regard necessary is very high.
...”

79. However, one should not read into those propositions – or into the observations made by Aikens LJ in paragraph 31 of the judgment in *Brown*, where he referred to the differing needs and characteristics of various kinds of disability – more than was intended by them or more than can be justified by the particular context in which they might be applied. They do not, in my view, mean that a local planning authority, when making a decision such as the Council had to make in this case, has to adopt the approach contended for by Mr Lopez.

80. In this case the Council had to comprehend the entire range of disabilities, of various kinds, represented among those affected by the loss of the garden centre and by the development now proposed. It had to heed what was said in the representations made by – and for – those with a disability, whatever that disability might be, and the elderly. And it had to bring that understanding into a conscious assessment of the likely consequences of the development for people with protected characteristics, having regard to the statutory needs. It knew that the main concern of those with the relevant protected characteristics was the loss of the garden centre, a loss that will no doubt have affected some people more seriously than others, some with protected characteristics more seriously than others with such characteristics, and some of those with such characteristics more seriously than those without them. But, when performing its duty under section 149, the Council did not have to consider the impact of that loss on each individual with a protected characteristic, or on everyone with a particular form of disability. It had to grasp the full scale and significance of the objections related to that duty, and the likely consequences of the decision it was taking for all those with protected characteristics. In my view, it did that.

81. When it came to determine the Trust's second application for planning permission the Council knew that the claimant and others were very keen to see the equality duty properly performed. It had already been faced with a challenge by the claimant to its decision to approve the first application. In that challenge the claimant had asserted that the Council had failed to discharge the equality duty. The Council had conceded this. It now consulted again. In doing so it sought the views of those who could explain to it the likely effects of the development on those with protected characteristics under the 2010 Act. I do not accept that the Council's consultation was deficient in the attention it gave to the disabled and the elderly. The Council consulted widely – certainly widely enough to gather the whole spectrum of opposition to the development, including objections relating to its effects on people with disabilities and the elderly. The responses were meticulously analysed according to age and disability. Further consultation was carried out, whose aim was to inform the Council specifically on the concerns of the elderly and the disabled and those responsible for their care. The consultation letter sent out by the Council in October 2011 sought more

information about objectors' use of the garden centre, and how they had travelled there, and, through the diversity monitoring questionnaire, about the age groups and specific disabilities of those who responded. The Council cannot fairly be criticized for consulting groups and service providers said by the Mill Hill Action Group to have been users of the garden centre, or for not having extended its additional consultation to a larger number of residents and bodies. So far as I can see, no one who was left out of this exercise has complained that his or her reasons for objecting to the Trust's development have been ignored.

82. In the objections of – and on behalf of – disabled people and the elderly there was a predominant theme. These objectors were mainly aggrieved by the loss of a facility that had enabled them to meet and converse with other members of the local community, including people who are neither disabled nor elderly. If one seeks to link this grievance to the specific needs referred to in section 149 of the Equality Act 2010, the most obvious connection is to the need to “foster relations between persons who share a relevant protected characteristic and persons who do not share it” (subsection (1)(c)). It may also impinge on the need to “advance equality of opportunity” (subsection (1)(b)) and, possibly, the need to “eliminate discrimination” (subsection (1)(a)). Relating it to the need to eliminate “harassment, victimisation and any other [prohibited] conduct” would, I think, be difficult.
83. The results of consultation were fed into the committee's deliberations. Objections were accurately reported by the officers, and at length. Concern about the loss of the garden centre, and how this had affected disabled and elderly people in the local community, was prominent in the officers' summary.
84. The officers conveyed to members the burden of the objections relating to the public sector equality duty. They transmitted the substance of these objections in paragraph 1.16 e) of their report. At the start of their summary they reminded the members of the requirement to have regard to the “fostering of good relations between persons who share a relevant protected characteristic and persons who do not share it”, thus bringing into their own minds – and the members' – the need referred to in section 149(1)(c) and elaborated in section 149(5). They referred to the idea that “the elderly and the disabled should be given priority”, the contention that the “[garden] centre site is a primary centre for interaction between the mentally and physically disabled and able-bodied members of the community”, objectors' reliance on the Council's commitment in its Local Development Framework Statement of Community Involvement to making the borough “a place where disabled people can lead fulfilling lives and play a full part in society”, on the Council's duty as landowner “to pay due regard ... to those with protected characteristics”, and on the value of the garden centre as “a community asset in this location, [and a] focus of support and visitation by [a] large number of mental health charities ...”.
85. In summarizing the issues raised during consultation, the officers separated the consultation responses relating to the elderly and the disabled from the others, dividing them geographically, and setting out, in the light of the original and the further consultation the Council had conducted, the reasons why the garden centre had been valued by residents and, in particular, by those with protected characteristics. One can see the level of detail to which the officers went by looking at paragraphs 1.20.2, 1.20.3 and 1.20.4 of the report, where the particular concerns of groups dedicated to the care of those with particular mental or physical disabilities – including, for example, autism – are summarized.
86. When they brought together, in section 7 of their report, the considerations relevant to the equality duty, the officers recognized the effects of the loss of the garden centre on those with

protected characteristics. The results of the consultation process informed the discussion of the issues. If the Trust's proposals could be seen as discriminatory, or inimical to equality of opportunity and the fostering of good relations between those who shared the relevant protected characteristics of age and disability and those who did not, the officers helped the members on the relevant considerations, and the members made their decision with those considerations in mind.

87. The officers noted that "for many residents" the loss of the garden centre "represented the loss of a local facility that they used socially to meet friends and interact with the local community as well as for shopping" (paragraph 7.2.6). The reference here to "residents" must be taken as including local people with "protected characteristics". The officers had taken the trouble to visit "alternative facilities" in the local area, to find out what these had to offer (paragraph 7.2.7).
88. Focusing on the "implications of the proposals" (in paragraph 7.4), the officers concentrated on the benefits of the garden centre for vulnerable sections of the community, notably the elderly and the disabled, including, in particular, those looked after by the Autism Service on Flower Lane (paragraph 7.4.1). They noted the many objections that had mentioned the "unique nature" of the garden centre as "an important community facility for many local residents, particularly the elderly and disabled who have difficulty using public transport and therefore accessing similar facilities elsewhere" (paragraph 7.4.2). They referred to the particular points that had emerged in the responses to the "targeted consultation", explaining why the loss of the garden centre was lamented (paragraph 7.4.3). They stressed that a "significantly greater number of residents" were concerned by the effects of this "on groups with protected characteristics" (paragraph 7.4.4). They did not say that the local community as a whole, or the disabled and the elderly in particular, would gain as much from using the school's facilities as they had from their use of the garden centre. They did not say that the Trust had committed itself to replacing facilities now gone with something equally good. They acknowledged that elsewhere in the area "similar" services were available, and "some" of the same needs were met; that there would no longer be a café on the site; that although there is another garden centre in Mill Hill it is not as accessible on foot as the Wyevale garden centre had been; that some of the shops, cafes and restaurants in Mill Hill town centre "may not be as independently accessible to those with mobility problems, particularly wheelchair users," as the Wyevale garden centre had been; and that Mill Hill park "does not provide an all-weather facility on the same scale as the former garden centre" and the café there "may not be as appropriate for certain users as the garden centre" (*ibid.*). This part of the officers' report did not gloss over the disadvantages of those other facilities.
89. The officers accepted that the departure of the garden centre had had an "impact ... on particular individuals, particularly those elderly people or disabled people who cannot use public transport or who made use of the garden centre socially as a place to meet friends or interact with the wider community" (paragraph 7.4.5). The committee was advised that "significant weight must be placed on those impacts when considering the merits of the planning application" (*ibid.*). And the officers went on to set "the identified impacts on groups with protected characteristics" against other considerations: first, the fact that until the garden centre closed in September 2011 the site was in commercial use under a lease "privately owned"; second, the benefit of a school being provided to meet an identified need; and third, the support in government policy – in the National Planning Policy Framework – for the creation of new schools by local people (paragraph 7.4.6).

90. When they struck the balance the officers found the effect the development would have on “the identified protected groups” outweighed by other considerations, including the fact that “the Council has no planning control over the closure of the garden centre”, their conclusion that the “adverse impacts” of the proposed change of use would not be as bad as was feared, “given that the activities carried on at the centre by the identified groups can be carried on elsewhere in nearby locations”, and the “compelling need for the school” (paragraph 7.4.7). On the strength of this analysis the officers were able to recommend, and the members to decide, that permission for the Trust’s proposals ought to be granted (*ibid.*).
91. In my view the officers’ report displays a coherent approach to the requirements of the due regard duty in this case. When the committee resolved to grant planning permission the officers, and in their turn the members themselves, were conscious of the equality duty under section 149, conscious of the particular effects the development was likely to have on those with protected characteristics, and conscious that due weight should be given to those effects in the decision that had to be made. The officers marshalled all the material relevant to the equality duty. They collected the facts relating to the use of the garden centre and the representations made about the impact of its loss on those who had used it, including, specifically, the elderly and the disabled. In their advice to the members they placed these facts and these representations within their planning analysis, having taken care to distinguish the material relating to those with protected characteristics from that relating to the local populace as a whole. They expressed their conclusions, which were conclusions on balance. Guided in this way, the committee accepted the officers’ advice and recommendation. And the Council stated the result of this process, in concise terms, in its decision notice. All of this, I believe, shows a conscientious approach to the imperatives of the equality duty.
92. The officers did not express their conclusions in section 7 of the report in the words of section 149. However, it is substance – not form – that matters. The authorities stress this. To judge whether the substance of the exercise matches the requirements of the statute, one must read the relevant passages of the officers’ report together – not only their assessment in section 7, which they began by quoting the salient provisions of section 149, but also their opening summary, in which, when outlining the “implications and impacts” of the closure of the garden centre, they acknowledged all three of the statutory needs, the reasons they recommended for approval, in which they explicitly mentioned the needs embraced in section 149(1)(a) and (b) and distilled their conclusions as to the need referred to in section 149(1)(c), and their summary of the issues raised in the objections, in which they encapsulated the issues relating specifically to the provisions of section 149 and, in particular, those within the ambit of section 149(1)(c). There can be no doubt, therefore, that the Council’s officers – and the members too – were alive to each of the needs in section 149(1), and had the specific statutory considerations in mind.
93. In this case, as Mr Booth and Mr Brown submitted, the concept of equality of opportunity in section 149(1)(b) of the 2010 Act and the concept of discrimination in section 149(1)(a) both related to the same basic issue. The issue had two aspects: first, the quality and accessibility, for the disabled and the elderly, of facilities similar or comparable to those the garden centre had provided, and second, the particular disadvantage that people with these protected characteristics would now face in getting to such facilities. The officers considered these matters thoroughly in section 7 of their report. They also tackled objections bearing on to the fostering of good relations between persons who share a relevant protected characteristic and those who do not – the need referred to in section 149(1)(c). The thrust of those objections had been noted by the officers in paragraph 1.16 e).

94. Although the Council's summary reasons for approving the Trust's application, as recorded in the decision notice, do not explicitly refer to section 149, they do refer to the due regard duty. They make plain that the members endorsed the officers' approach and the conclusions to which it led. The decision notice incorporated the reasons suggested to the committee by the officers, in which their own assessment of the merits of the Trust's proposals had been distilled. In it the Council referred to and adopted the conclusions the officers had reached "having paid due regard to the need to eliminate discrimination and promote equality with regard to those with protected characteristics": the needs referred to in section 149(1)(a) and (b) of the 2010 Act. The decision notice also states the essential conclusion that "the [benefit] to the wider community of the provision of new educational facilities outweighs the adverse impact on those with protected characteristics." These reasons reflect the analysis in section 7 of the officers' report.
95. There was no breach in this case of the principle, illuminated by the Court of Appeal in *Harris*, that an authority must "focus on the requirements of the section and not merely ... deal in generalities", which "requires attention to the language of the section to determine the content of the duty" (see paragraph 8 of the judgment of Pill LJ). The Council neither neglected the language of the relevant statutory provisions nor misunderstood the duty imposed. Alert to the need to eliminate discrimination, the need to advance equality of opportunity and the need to foster good relations between those with and those without the relevant protected characteristics, it did not find the "adverse impact" of the loss of the garden centre sufficient to defeat the Trust's application. In view of the countervailing factors mentioned in paragraphs 7.4.6 and 7.4.7 of the officers' report, this conclusion was a reasonable one for the Council to reach. A finding of harm to the interests protected by section 149 did not dictate the refusal of planning permission. To suggest it did would be to ignore the principle, underlined by Dyson LJ in *Baker* (at paragraph 31), that the equality duty does not oblige an authority to achieve a specific result.
96. Not merely in form, therefore, but also in substance the equality duty in section 149 was properly discharged in this case. Tested by the six principles stated in *Brown*, the Council's performance of the duty emerges as sound and complete. The Council did what public authorities were enjoined to do by the Court of Appeal in *Baker*. It had due regard to the need to achieve the statutory goals, not as an abstract exercise but with realism and common sense. It did what was appropriate in all the circumstances. It had regard not only to "the importance of the areas of life of the members of the disadvantaged group ... affected by the inequality of opportunity and the extent of the inequality" but also to the "countervailing factors" to which due weight should be given.
97. Finally, I reject the submission that the Council made a "factual error" in finding a need for more Free School places.
98. This submission was not originally pleaded in the claimant's grounds. It was not particularized beyond broad assertion in the four paragraphs of Mr Lopez's skeleton argument where it was first raised (paragraphs 94 to 97). In oral argument it seemed to rest on evidence about the need for additional school capacity that was given by Ms Samuelson in her first witness statement. As was made clear to me by Mr Booth and Mr Brown, however, that evidence is disputed by both the Council and the Trust.
99. In *Connolly v The Secretary of State for Communities and Local Government* [2009] EWCA Civ 1059, an inspector had not been told about the planning history of the site, though she should have been, and her decision was quashed. The appeal to the Court of Appeal narrowed to the

question of procedural unfairness (see paragraph 32 of the judgment of Rix LJ). Rix LJ referred (in paragraph 34) to the decision of the House of Lords in *R v Criminal Injuries Compensation Board, ex p. A* [1999] 2 AC 330 (per Lord Slynn at pages 344 to 347) and the decision of the Court of Appeal in *E v Secretary of State for the Home Department, R v Secretary of State for the Home Department* [2004] EWCA Civ 49 (at paragraphs 63 to 66). In paragraph 66 of its judgment in *E and R* the Court of Appeal said this:

“In our view, the time has now come to accept that a mistake of fact giving rise to unfairness is a separate head of challenge in an appeal on a point of law, at least in those statutory contexts where the parties share an interest in co-operating to achieve the correct result. ... Without seeking to lay down a precise code, the ordinary requirements for a finding of unfairness are apparent from the above analysis of the *Criminal Injuries Compensation Board* case. First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence must have been “established”, in the sense that it was uncontentionous and objectively verifiable. Thirdly, the appellant (or his advisers) must not have been responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the tribunal’s reasoning.”

100. In this case at least the second of those four criteria is not met. The alleged error is not uncontentionous. It is, in fact, highly contentious. And it has not been objectively proved. Indeed, I think the allegation itself is obviously wrong, because the assessment of educational need in section 4 of the officers’ report seems to have assumed that the Trust’s school was already meeting some of the demand for primary school places and would continue to do so. But I do not need to go that far. I only have to conclude, as I do, that the mistake Mr Lopez accused the Council of making is not established. Because it is not established the submission Mr Lopez sought to base upon it is not available to him.
101. Some of Mr Lopez’s submissions on this issue were reproduced in his argument on the other main issues, to which I shall now turn.

Issue (2): the section 106 obligation

Submissions

102. Mr Lopez submitted that the section 106 agreement entered into by the Council when it granted planning permission was defective, and that the flaws in it were not put right by the deed of variation. The agreement did not reflect the principles set out in Circular 05/2005: “Planning Obligations”, whose advice remained valid. It would not secure an adequate community use on the site. The Trust was required only to produce a draft Community Access Plan. The Council ought to have insisted on a final version being prepared and that the Trust committed itself to it in the agreement. Clause 3.7 of the agreement envisaged a draft being submitted before the planning permission was implemented, and clause 3.8 allowed for this to be revised to reflect any comments made by the Council. Neither the agreement itself nor any of the conditions on the planning permission required the Community Access Plan to be put into effect. There was no definition of “associated community uses” to give effect to this concept in condition 3. The “Site” referred to in the definition of the Community Access Plan was not itself defined. These deficiencies in the agreement rendered conditions 3 and 4 in the planning permission imprecise and unenforceable. Because those conditions went to the heart of the planning permission they could not be severed from it (*Hart Aggregates Limited v Hartlepool Borough Council* [2005] EWHC 840 (Admin)). Mr Lopez also submitted that the Trust’s commitment to bring forward a

Community Access Plan could not run with the land. Unless a final version of it was tied to the obligation a successor in title would not be bound to such an arrangement.

103. Mr Booth and Mr Brown submitted that there was no substance in this ground as originally pleaded, but that in any case the deed of variation had overcome all the concerns the claimant had raised. The effect of the deed of variation was to require anybody seeking to implement the permission to submit a Community Access Plan for the Council to approve. The requirements of the Community Access Plan, once approved by the Council, would have to be met.

Discussion

104. In my view, none of the complaints made about the form and content of the section 106 agreement is justified. I do not accept that any of them was sound before the obligation was varied. But as Mr Booth and Mr Brown submitted, they are fully answered in the deed of variation.
105. By the time the Council granted planning permission for the Trust's development Circular 05/2005 had been withdrawn. The advice it contained was no longer extant. I see no conflict between the section 106 obligation agreed in this case and government policy and advice current when the Council approved the Trust's development.
106. The planning permission was issued only after the section 106 obligation had been agreed. When the permission and the obligation are read together, as they must be, the references to the Community Access Plan in conditions 3 and 4 make perfect sense. The suggestion that these two conditions are imprecise, unenforceable and invalid is wrong. They are clear and can readily be enforced.
107. The submission that the content of the Community Access Plan should not have been left for later approval is also bad. There is nothing unusual, or unlawful, in a section 106 obligation requiring the submission of a scheme for the local planning authority to approve after planning permission has been granted. No doubt the obligation in this case could have been drafted differently. It could have contained a final version of the Community Access Plan. But it did not, and it did not have to.
108. The submission that the obligation could not run with the land is also wrong. Under section 106(3) it will be enforceable against the Trust and against anyone who derives title from it. No subsequent owner of the site would be able to avoid the restrictions and commitments set out in the obligation.

Issue (3): conditions 3 and 4

Submissions

109. Mr Lopez submitted that the effect of both condition 3 and condition 4 was to require a section 106 obligation to be entered into, to secure a Community Access Plan. This is the only reasonable construction one can put on those two conditions. As was made plain in Circular 05/2005 and in Circular 11/95 "The Use of Conditions in Planning Permissions", it is wrong in principle for planning permission to be granted subject to such a requirement. One cannot

imply into these conditions words they should have contained to make clear what the Council intended (*R (Sevenoaks District Council) v First Secretary of State* [2004] EWHC 771 (Admin)). They ought to have been plain in their own terms. Both, however, “defer” to a section 106 obligation “so that their meaning can be ascertained”. Without them the development would be unacceptable. They are invalid and the planning permission must therefore be quashed. Mr Lopez repeated his submission that the expression “associated community uses” in condition 3 is vague. This vagueness, he said, was not removed by the section 106 agreement. The condition was thus unlawful for its lack of precision.

110. Mr Booth and Mr Brown submitted that neither condition 3 nor condition 4 is unlawful. Condition 3 regulates the way in which the development is to be used and condition 4 the hours during which it may be used. Neither is imprecise or unenforceable. Neither requires the Trust – or anyone else – to enter into a planning obligation. When planning permission was granted on 30 March 2012 the obligation already existed. There was nothing unusual in this. Although the circulars relied on by the claimant no longer applied when the Council granted planning permission, conditions 3 and 4 did not conflict with the advice in them.

Discussion

111. I see no force in Mr Lopez’s submissions on this issue.
112. The submission that conditions 3 and 4 are unlawful because they require the Trust to enter into a section 106 obligation is untenable. It rests on a misconstruction. Neither condition stipulates that a planning obligation must be entered into. It is impossible to construe either of them as if it did.
113. The requirement in condition 3 is to the effect that the school will be operated only by the Trust and for “associated community uses as set out in the Community Access Plan”. The planning permission was issued on 30 March 2012, by which time the legal mechanism providing for the Trust to submit a Community Access Plan was already in place in the section 106 agreement, which had been entered into by the Council and the Trust on 29 March. There was no need for the Council to impose a condition to require what it had already secured, or to replicate the commitment the Trust had now made. To have done so would have been to ignore the elementary principle that planning conditions should only be imposed when it is reasonable and necessary to do so.
114. Condition 4 does no more than define the permitted hours of the school’s operation as a school, and allow for the additional use of the site by the local community “as agreed in the Community Access Plan”.
115. Neither condition compels the Trust to produce a Community Access Plan. And neither relies on there being an agreed Community Access Plan if it is to be enforced. The restrictions imposed will be no less effective before the Community Access Plan has been settled, while the school is operating only as a school within the hours specified in condition 4. Once the Community Access Plan is approved, the lawful use of the site under the planning permission will have been fully defined and the operating hours set. Then too the conditions will work as they should.

Issue (4): the temporary planning permission and alternative sites

Submissions

116. Mr Lopez submitted that, when considering the Trust's application, the Council ought to have ignored the grant of temporary planning permission for school use on land at 80 Daws Lane, which had been implemented. The fact that there was already a Jewish primary school on Daws Lane, for which the Trust would soon need to find a permanent site unless the temporary permission could be extended, had nothing to do with the intrinsic merits of the Trust's proposals for the site itself. Even if that submission were not accepted, however, the Council ought not to have taken the temporary planning permission into account without first considering whether the school could be located somewhere else. The reasons given by the Trust for rejecting the sites suggested by objectors were unconvincing. This was a case in which the development would cause significant harm, but the developer had argued that this harm was outweighed by need. It was, therefore, the kind of case in which alternative sites had to be considered with the appropriate level of scrutiny (*R (Jones) v North Warwickshire Borough Council* [2001] EWCA Civ 315). The Council had failed to do this.
117. Mr Booth and Mr Brown submitted that the presence of the Trust's school at 80 Daws Lane, for which the Council had granted temporary permission, was a material consideration to which the Council was entitled to have regard, and indeed had to have regard, when considering the Trust's application. Had the Council failed to do this it would have committed an error of law. And the Council did consider whether planning permission could properly be withheld because the school might be developed on another site. In their report the officers evaluated a number of alternative sites. That the claimant disagrees with the conclusion the officers and members reached does not give rise to a ground of challenge in judicial review.

Discussion

118. The claimant's argument on this issue is, in my view, misconceived.
119. The temporary planning permission, which had enabled the Trust to open and run its school at 80 Daws Lane, and the need to find somewhere for it to go once that permission had expired, were plainly relevant to the Council's decision on this application. There can be no sensible dispute about that. Children were already being educated by the Trust in this part of the borough. The school was already helping to meet the need for primary school places. If it were lost because a permanent site could not be found for it, the children would have to be moved to other schools, and the need for places would be greater. Journeys to and from it were already being made. It was already generating traffic on local roads. To think that these were immaterial considerations would be to defy common sense. The Council would have been at fault if it had not had them in mind and given them weight in its decision. How much weight was for it to determine. But this did not prevent it from considering whether the Trust's development was an acceptable use of the site on which it was proposed.
120. The Council did look at alternative sites for the development. The report prepared by PFS and DTZ had concluded that none of them was both suitable and available for the development of the school. But the Council did not simply accept what was said in the Trust's report. The officers referred to the alternative sites that had been considered in the report and the reasons why they had been rejected by the Trust. They made their own comments on those sites (in paragraph 4.5.1 of their report). Those comments were no less

clear for being succinct. It is not for the court to attempt its own assessment of the alternative sites, or to consider how convincing the officers' was. Such an exercise would take the court beyond the limits of a public law challenge to a planning decision.

Issue (5): consultation

Submissions

121. Mr Lopez argued that the Council did not consult adequately on the Trust's application before it granted planning permission. He also submitted that the addendum to the officers' report came only on the evening of the committee meeting. The public did not know it was going to be produced, and were not given the chance to comment on it. Some of its content was technical – for example, on important matters such as air quality. It noted that further consultation had been carried out after the Council had received a revised Transport Statement and School Travel Plan, and further information on community uses. Repeated extensions to the consultation period made it hard for those with disabilities and the elderly to understand and object to the proposals effectively. It was clear from the addendum that further objections had been received after the officers' report was prepared. Late objections not referred to in the addendum and objections that could have been made but for the confusion over the consultation period might have raised new material considerations, which the Council did not take into account (*R (Gavin) v Haringey London Borough Council* [2003] EWHC 2591 (Admin)).
122. Mr Booth and Mr Brown submitted that the Council's consultation exercise was both thorough and fair. The Council had complied with the statutory requirements for notification. Local residents and groups, and bodies responsible for people with disabilities and the elderly were consulted. Users of the garden centre were as well. Representations made on the Trust's previous application for planning permission were taken into account again. Twice the consultation period was extended, to ensure that those consulted had the opportunity to comment on new material submitted by the Trust. It was not necessary for the Council to consult on the addendum to the committee report as well as on the application itself. The addendum was intended to help the members by bringing the officers' report up to date before the meeting. Anyway, the claimant had not pointed to any objection that might have been made if the Council had consulted still more widely than it did. The allegation that the Council discouraged some of the service providers from objecting was untrue. Reliance on the decision in *Gavin* was misplaced; the facts of that case were very different.

Discussion

123. The submissions made by Mr Booth and Mr Brown on this issue are in my view right. The claimant does not – and cannot – point to any breach of the statutory requirements relating to notification and consultation, or of any procedure normally adopted by Council. In fact, the Council went well beyond the statutory requirements.
124. I do not believe that the Council's decision to extend the consultation period gave rise to any confusion. On 19 October 2011 the claimant himself had written to the Council complaining about the "unjustifiable brevity of a three week period of consultation" and had asked for it to be extended. It is hard to see how extending the consultation period can have resulted in fewer people responding, or the opportunity for objection being curtailed. To

extend the time for objecting to the proposal was reasonable, to allow comments to be made on the new documents presented to the Council by the Trust. If the Council had not done this it might have been criticized.

125. Producing the addendum was a sensible thing to do. Its purpose was to complete the officers' advice. It had to be drafted shortly before the committee met. It did not identify all the objections that had come in after the officers had prepared their report, but there was no need for it to do so. Nor was the Council obliged to consult on its content. The claimant's argument implies an unending cycle of consultation and report drafting before a decision on the proposal could be made.
126. Unless the claimant could show – which he has not – that there was some new point in the objections received at the end of the process, and that this new point ought to have been covered in advice to the members but was not, the submission that the Council may have ignored material considerations goes nowhere.

Issue (6): car parking and traffic

Submissions

127. Mr Lopez submitted that the Trust had made no reliable assessment of the traffic the development was likely to generate or of the demand for car parking it was likely to create. There were errors, for example, in defining the school's catchment area, in the assumptions made for the travel mode survey, and in the estimates for traffic generation, which had excluded community use. If the Council was to impose – as it did in condition 9 on the planning permission – a requirement for a School Travel Plan, it had to understand how many trips to and from the school were likely to be made by car. Yet it had carried out no assessment of its own to satisfy itself that the extra traffic on the local road network would be acceptable and that the demand for parking would be met. It had considered only the traffic from the school, not from any community use during or after school hours.
128. Mr Booth and Mr Brown said it was wrong to criticize the Council's treatment of these issues. The officers went into them at great length in section 6 of their report and the conclusions they reached were firm. Once again the claimant was seeking to impugn the Council's exercise of judgment on the material it had before it. The Council quite properly considered the traffic the school was already generating, though it knew that the school now proposed would be larger and would give rise to more traffic. It was aware of the fear that some community uses might overload local roads. However, the committee was advised that the Community Access Plan could prevent this. There was nothing inappropriate or unusual about condition 9, which required the submission and approval of a travel plan.

Discussion

129. I cannot see any error of law here. The Council's officers considered the likely effects of the development on the capacity and safety of the highway, and on the availability of car parking in the local area. When considering the Trust's Transport Statement, they took into account the surveys produced by local residents (paragraph 6.2.7 of their report), the survey data originally submitted by the Trust and information about journeys to and from the school on its temporary site (paragraphs 6.2.8, and 6.6.1 and 6.6.2), and school traffic on Daws Lane

(paragraph 6.6.3). They carried out their own surveys of traffic generated by similar schools in the area, for the sake of comparison (paragraph 6.7.1 to 6.7.5). And they conducted their own surveys of car parking on local roads (paragraphs 6.8.1 to 6.8.11).

130. I do not see how the officers, having done all of that, can be said to have misled themselves or the members about the likely effects of the Trust's development on the capacity and safety of the highway. In truth, this is an attempt to go behind the officers' professional judgment, and the advice they gave the committee in the light of that judgment. It has no place in a claim for judicial review.
131. I am not attracted by the submission that the effects of community use on local traffic and car parking were ignored and that for this reason the Council's decision should fall. As Mr Brown said, and as one might expect, a transport assessment will normally concentrate on the hours of greatest concern, usually the peak hours. If the likely effects of a proposed development will be acceptable when the roads affected are most under stress, its effects at other times will generally be acceptable too. The officers knew this, as they made clear in their report (in paragraphs 6.6.3 to 6.6.5). They said (in paragraph 3.5) that the activity associated with the proposed use of the site would be no more harmful than that associated with the existing use. And their advice (in paragraph 5.3.6) was that the effects of a particular community use could be addressed through the Community Access Plan. In my view it is impossible to hold that that advice was unreasonable. The claimant may disagree with the approach the officers took and the conclusions they reached, but such disagreement is not a basis for quashing the Council's decision.
132. As the officers explained (in paragraph 6.2.1 of their report), to require a travel plan was normal in permitting development such as this. There is nothing unlawful in the terms of condition 9. And the fact that the Council imposed this requirement does not betray any flaw in its treatment of the issues it had to resolve before planning permission could be granted.

Issue (7): reasons

Submissions

133. Mr Lopez submitted that the Council failed to give adequate reasons for its grant of planning permission, a serious omission in this case because the equality duty had to be discharged. The reasons given in the planning permission did not explain, as they should have done, how the Council had addressed the main issues before it (*R v Horsham District Council, ex parte Tratt* [2007] EWHC 1484 (Admin)). The Council's failure to do this should lead to the planning permission being quashed. It went against Parliament's purpose in requiring summary reasons to be given for grants of planning permission, which was to extend public involvement in the planning process (*R v Brighton and Hove City Council, ex parte Wall* [2005] 1 P. & C.R. 566).
134. Mr Booth and Mr Brown submitted that the Council's decision notice provides at least a sufficient explanation of the basis on which the decision to grant permission was made. The relevant jurisprudence is to be found in the decisions in the Court of Appeal in *R (on the application of Siraj) v Kirklees Metropolitan Borough Council* [2010] EWCA Civ 1286 (in particular, what was said by Sullivan LJ at paragraphs 14 to 16 of his judgment) and *R (on the application of Telford Trustee No. 1 Ltd and Telford Trustee No. 2 Ltd v Telford, Wrekin Council* [2011] EWCA Civ 896 (in particular, what was said by Richards LJ at paragraph 24 of his judgment), which the

argument for the claimant had neglected. The requirement to provide summary reasons for granting planning permission differs from the requirement to provide full reasons for a refusal. What is required is a summary of the reasons for the grant, not a summary of the reasons for rejecting what had been said by objectors.

Discussion

135. I cannot accept Mr Lopez's argument on this issue.

136. The duty to give reasons for the granting of conditional planning permission, which is provided by article 22(1)(b)(i) of the Town and Country Planning (General Development Procedure) Order 1995 (as amended), is a duty to include in the decision notice "a summary of [the authority's] reasons for the grant together with a summary of the policies and proposals in the development plan which are relevant to the decision to grant planning permission". This is not to be equated with an authority's duty, when refusing permission, to give full reasons for the refusal, nor with the duty of the Secretary of State (or an inspector appointed by him) to give reasons for the decision on an appeal (see paragraphs 18 to 20 of Richards LJ's judgment in *Telford*, citing paragraphs 14 to 16 of Sullivan LJ's judgment in *Siraj*). In paragraph 16 of his judgment in *Siraj* Sullivan LJ said that in a case in which the members had followed their officers' recommendation, and there was nothing to indicate their having disagreed with the reasoning underlying that recommendation, "a relatively brief summary of reasons for the grant ... may well be adequate". Sullivan LJ in *Siraj* (ibid.) and Richards LJ in *Telford* (at paragraph 23) endorsed the observations of Sir Michael Harrison at paragraphs 47 to 50 of his judgment in *R (Ling) (Bridlington) Limited v East Riding of Yorkshire County Council* [2006] EWHC 1604 (Admin), preferring them to those of Collins J in *Tratt* (at paragraphs 25 and 26), on which Mr Lopez relied in his submissions on this issue, and in *R (Midcounties Co-operative Limited) v Forest of Dean District Council* [2007] EWHC 1714 (Admin) (at paragraph 28). Richards LJ went on to stress (at paragraph 23 of his judgment) that "the statutory requirement is to give a summary of the reasons for the grant of planning permission, not a summary of the reasons for rejecting an objector's representations (even on a principal issue) or a summary of reasons for reasons".

137. In my view the reasons given for the grant of planning permission in this case satisfy the requirements of article 22. The only criticism of the Council's reasons is directed at a single sentence in paragraph 1 i) of them, which summarizes its conclusion under section 149 of the Equality Act 2010. This records the Council's view that "the [benefit] to the wider community of the provision of new educational facilities outweighs the adverse impact on those with protected characteristics". But the context in which that conclusion is expressed is, in my view, important. In this part of its reasons the Council states, among other things, that the proposed development is "considered to be acceptable with regard to development plan policies ..." and that it "would introduce valuable education accommodation in the borough". Although section 149 of the 2010 Act is not mentioned, the reasons state not only that the Council's officers have taken into consideration "all material planning matters" but also that they have "paid due regard to the need to eliminate discrimination and promote equality with regard to those with protected characteristics". The officers' conclusions in section 7 of their report are not recited in the decision notice, nor would that have been appropriate. It is made plain, however, that the Council had adopted the officers' analysis as its own. This, therefore, is one of those cases contemplated by Sullivan LJ in paragraph 16 of his judgment in *Siraj*. The members had clearly accepted their officers' advice, and followed the recommendation in which that advice was reflected. In the circumstances, clarity was not sacrificed to brevity.

Whether seen as a free-standing statement of the Council's conclusions or read together with the officers' report, the reasons here were, I believe, perfectly adequate.

Conclusion

138. For the reasons I have given, whilst I grant permission, the claim must be dismissed.