

IN THE HIGH COURT OF JUSTICE
QUEEN’S BENCH DIVISION
ADMINISTRATIVE COURT: PLANNING COURT
IN THE MATTER OF A CLAIM FOR JUDICIAL REVIEW

Claim No. _____

BETWEEN:

THE QUEEN
on the application of
MR MARK RECORD

Claimant

-and-

WEST SUSSEX COUNTY COUNCIL

Defendant

DRAFT STATEMENT OF FACTS AND GROUNDS

Essential reading

- (a) This Statement of Facts and Grounds.
- (b) Decision and Officer Report (including Appendices) (“the OR”).
- (c) Notice the subject of consultation in summer 2021.
- (d) Emails from Defendant’s legal officer of 15 and 17 December and FOIA Response.
- (e) WGSR-100-Rev P2.
- (f) LTN 1/20 at 1.6.1(2), 4.4.4, 5.5.3-5.4.4 and Table 5.3 and 6.5.4-6.5.5 and Table 6-3.
- (g) CD 153 at “summary” and “scope”.
- (h) Traffic Control at 17.2.6

References

References to the electronic claim bundle are in **bolded** square brackets **[CB/page]**

References to the ICLR’s *Leading Planning Cases* are (LPC p.xx).

INTRODUCTION AND SUMMARY OF CLAIM

1. The Claimant seeks permission to challenge by way of judicial review the decision of the Defendant of 29 November 2021, ref: HT12 (21/22) (“the Decision”), taken by it as highway authority under the Highways Act 1980 (“the Highways Act”) and local traffic authority under the Road Traffic Regulation Act 1984 (“the RTRA”) **[CB/X]**:

Purpose:

Permission has been granted for a mixed residential development on land west of Chichester. To improve sustainable transport provision a raft of highway improvements have been proposed on the existing highway network in the vicinity of the development site to promote priority for pedestrians and cyclists and to provide sustainable transport links from the development to the city centre.

The package of Traffic Regulation Orders (TRO), pedestrian crossing places and road humps associated with these highway improvements were advertised. During the statutory consultation five supportive comments and 30 objections were received which have been summarised in Appendix C to this report.

Decision:

The Cabinet Member for Highways & Transport has authorised the Director of Law & Assurance to make the Traffic Regulation Order and allow for the installation of the pedestrian crossing places and roads humps as advertised, as set out in Section 2 of the report.

2. The “report” was an officer report prepared by the Defendant’s Director of Highways & Transport Planning (“the OR”), comprising main text and appendices (“the OR: Main Text” and “the OR: Appendix x”) [CB/X]. The Decision followed the recommendation in the OR and in the normal way the OR is taken to represent the Defendant’s reasoning.
3. By the Decision the Defendant:
 - (1) authorised the “Package” of ‘associated Traffic Regulation Orders (TROs), pedestrian crossing places and road humps’; and
 - (2) decided to proceed with the “highway improvements” with which the “Package” was associated.
4. The Defendant has advised, by email from its legal officer of 15 December 2021, that the Traffic Regulation Orders the subject of the Decision ‘will not be made until the necessary highways works have been undertaken’ [CB/X].
5. Of particular concern to the Claimant, among the proposals the subject of the Decision, the Defendant decided to:

- (1) convert existing pedestrian footway on the adopted highways known as Sherborne Road and Westgate at the northern, eastern and western arms of their junction (“the Junction”) into shared pedestrian/cycle space (“the Shared Space”); and
 - (2) provide (parallel) pedestrian and cycle crossings on road humps (“the Crossings”) at the northern and eastern arms of the Junction (“the Sherborne Crossing” and “the Westgate Crossing”), linked in to the Shared Space.
6. It is the Decision in respect of these proposals, so those at and immediately associated with the Junction, that is the Claimant’s concern, albeit once the Defendant reconsiders these aspects that should have wider implications, including consideration of the Claimant’s suggested alternative: a low traffic neighbourhood scheme along Westgate.
 7. In brief, the Claimant contends that the Decision as regards arrangements at and immediately associated with the Junction is unlawful because:
 - (a) Ground 1: The Defendant misinterpreted and misapplied Government guidance, so failed to have regard to a mandatory material consideration and had regard to an immaterial consideration, particularly in relation to the actual and effective width of (i) the Shared Space (ii) the cycle elements of Crossings.
 - (b) Ground 2: The Defendant (i) failed to consult with an organisation representative of those with disabilities, erroneously purporting to consult with the West Sussex Association for Disabled People in circumstances where that organisation had ceased to exist in 2012/2013, and failed to consult with organisations representative of vulnerable road users, and consequently, and generally, failed to discharge its public sector equality duty (ii) erroneously believed there had been public consultation on the Junction proposals of concern to the Claimant (and others) before grant of the planning permission referred to in the Decision, and erroneously relied upon that same non-existent consultation and/or predetermined the Decision.
 8. As the Defendant has said it will proceed with “the highways works” before making the Traffic Regulation Orders, the Claimant cannot wait for that later step, and asks that the Court quash the Decision at least in so far as it concerns the proposals at and immediately associated with the Junction, or the Decision in its entirety if the Defendant contends those aspects cannot be divorced from the rest.
 9. This Statement of Facts and Grounds is now structured as follows:

- Factual background: (i) consultation and proposals (ii) Decision (iii) subsequent information provided by Defendant
- Legal framework.
- Grounds.
- Relief sought, other applications and conclusion.
- Annex concerning Outline Permission

FACTUAL BACKGROUND

(i) Consultation and proposals

10. The Decision was the subject of prior consultation in summer 2021, notified by text (“the Notice Text”) and accompanying drawings (“the Notice Drawings”) (together “the Notice”). The Notice Text, so far as relevant to proposals at and immediately associated with the Junction, said this, after a header referring to two Local Orders and then to s.23 of the RTRA and to ss. 90 (A), (C) and (D) of the Highways Act [CB/X]:

NOTICE is hereby given that West Sussex County Council under the provisions of the Road Traffic Regulation Act 1984, Highways (Road Humps Regulations) 1999 and Highways Act 1980, propose to:-

(i) ...

(iii) install a parallel pedestrian/cycle crossing on a flat top hump on Westgate 32 metres east of the Sherborne Road roundabout junction; and

(iv) install a parallel pedestrian/cycle crossing on a flat top hump on Sherborne Road 15 metres north of the Westgate roundabout junction; and

...

11. The remainder of the Notice Text listed other elements, then gave an explanation similar to the text under the “purpose” heading in the Decision regarding the planning background, then said this [CB/X]:

This Order is proposed so as to avoid danger to persons or other traffic using the road or to prevent the likelihood of any such danger arising, for improving the amenity of the area through which the roads run and for facilitating the passage on the road of any class of traffic (including pedestrians) Drawing Nos. TRO-100 Sherborne Road Traffic Orders and WGO8-160 Westgate/Orchard Street

Proposed Dutch Style Roundabout 20mph Traffic Regulation Order & Plan SU8504NEN show the lengths of roads, which are the subject of the proposed orders.

12. The reference in the Notice Text and the Decision to ‘*Permission has been granted for a mixed residential development on land west of Chichester*’ is to a permission concerning ‘*land west of Chichester known as Whitehouse Farm*’ (OR: Main Text, paragraph 1.1), being outline planning permission, with all matters reserved save access, ref. CC/14/04301/OUT (“the Outline Permission”). The Outline Permission was granted on 11 April 2018 by Chichester District Council (“the District Council”), the local planning authority under the Town and Country Planning Act 1990 (“the TCPA 1990”) and gave outline permission for the “first phase” of a residential-led development for up to 750 homes with associated infrastructure [CB/X].
13. Of the Notice Drawings, the relevant drawing as regards proposals at and immediately associated with the Junction was TRO 100 Rev P1, left hand column [CB/X], and that is also at OR: Appendix B1 (“TRO 100 P1”) [CB/X].
14. By viewing TRO 100 P1 close up it can be seen that *inter alia*, as regards the northern, eastern and western arms of the Junction:
 - (1) a cyclist travelling southbound on the carriageway of Sherborne Road would be directed up onto what is presently a footway but would become Shared Space and encouraged to proceed south then east on the Shared Space, passing at the corner through a gap between a wall with a square brick pillar (“the Eastern Pillar”) and the Sherborne Crossing eastern beacon column, then either (a) to and over the Westgate Crossing, or (b) beyond it, past a driveway and onto Westgate carriageway eastbound;
 - (2) a cyclist travelling westbound on the carriageway of Westgate would be directed up onto what is presently a footway but would become Shared Space and encouraged to proceed west on the Shared Space, passing a driveway, then through a gap between a wall and the Westgate Crossing southern beacon column, then either (a) to and over the Westgate Crossing and over Shared Space to the Sherborne Crossing, or (b) past the Westgate Crossing, continuing on Shared Space to a crossing point south of the Junction;

- (3) a cyclist travelling eastbound on the carriageway of Westgate would be directed up onto what is presently a footway but would become Shared Space and encouraged to proceed east on the Shared Space, then either (a) to and over the Sherborne Crossing and continuing over Shared Space to or past the Westgate Crossing, or (b) beyond the Sherborne Crossing, past a wall with a square brick pillar (“the Western Pillar”) and onto Sherborne Road carriageway northbound.
15. In each instance cyclists and pedestrians would be using the Shared Space without segregation. Equally, the cyclist parts of the Crossings would be for two-way traffic, without segregation between cyclists in each direction.
16. The Claimant is the secretary of a Chichester-based organisation, ChiCycle, which aims to promote cycling and walking in and around Chichester.
17. The Claimant, on behalf of ChiCycle, produced a detailed letter of objection in response to the Notice, reproduced at OR: Appendix C2 (“the ChiCycle Objection”) [CB/X]. The ChiCycle Objection was to Notice items (iii) and (iv) and made clear its concerns regarding the proposals at and immediately associated with the Junction at its northern, eastern and western arms, summarised above. Not least that:
- (1) cyclists and pedestrians, in particular disabled and vulnerable pedestrians, would come into conflict on the Shared Space, due to narrow width and obstructions that meant corners/bends with little or no forward visibility; and
 - (2) cyclists would come into conflict on the Crossings, due to narrow width; and that
 - (3) what was being proposed was contrary to the applicable Government guidance.
18. The Defendant’s application of guidance and the issues of width and visibility are addressed below, under Ground 1.
19. No groups representing disabled people or disabled persons themselves were specifically consulted by the Defendant on the proposals. There are at least two local residents who rely heavily on assistance dogs and regularly use the footways that would be converted to Shared Space. Neither were consulted about the proposals. The RNIB, Canine Partners and Chichester District Access Group (“CDAG”) have also confirmed they were not consulted. CDAG’s Glynis Spencer contacted the Defendant by telephone on the last day of the Notice consultation period to complain about the lack

of notice and specific consultation with disabled persons and regarding the Junction, but was told (a) the consultation had closed and (b) the Shared Space aspects were set. No additional consultation took place and there is no reference to CDAG’s comments in the OR.

(ii) The Decision

20. In the normal way, the Court should take the OR to be the Defendant’s reasoning in support of the Decision (see legal framework below).

21. Despite appending the full ChiCycle Objection as OR: Appendix C2, the OR does not respond to it. However, OR: Appendix C does respond to other objectors making broadly similar points to those in the ChiCycle Objection (seemingly a total of 29 residents/local businesses in all, not the 30 objectors referred to in the Decision, and none of the “5” supporters referred to). In particular, see the response to objectors 1, 2, 4, 6 and 8, albeit those objections apparently lacked the detailed rigour of the ChiCycle Objection. Quoted below, with emphasis added, for ease of reference:

Objection/Comments	Comments from Director of Highways & Transport
<p>1. Resident of Old Broyle Road</p> <p>Objects to the introduction of two parallel crossings at the Sherborne-Rd/Westgate mini roundabout. This will:</p> <ul style="list-style-type: none"> • Lead to collisions between pedestrians and cyclists as the pavements are too narrow and the sight lines, often obstructed by brick walls, are inadequate • Lead to antagonism between pedestrians and cyclists at a time when we should be encouraging people out of their cars and onto their feet/bikes • Set a precedent for the remaining links between the West of Chichester Development 	<p>The mini roundabout in its current format was seen as a barrier for less confident cyclists. Allowing the shared facility to provide off road facilities at a 4-arm junction for less experienced cyclists especially those children attending Bishop Luffa is seen as beneficial in encouraging more children to cycle and achieve a reduction in school drop off and pick traffic.</p> <p><u>The available shared use width is 3.06m on the (western side) and 3.18m on the eastern side. LTN 1/20 Table 6-3 of 3.0m which the design adheres to for up to 300 cycles per hour. However, the existence of walls on the bends leaves effective widths of 2.5m at these locations. CD 143 Table E/3.4 states that a minimum effective width of 3m for an unsegregated shared footway/cycleway. This can be reduced in</u></p>

<p>and the City, particularly along the proposed route of the Southern Access Road</p> <p>At particular risk of injury are school children going to Bishop Luffa and people with restricted mobility.</p> <p>Moreover, plans that have recently been released towards the imminent construction of the West of Chichester Development Phase Two Southern Access Road, show that the spine road for this 1,600 new home development will directly connect at the location of the existing Sherborne Rd mini roundabout requiring virtually all cycle traffic to be transferred onto the existing pavements!</p> <p>This is completely unacceptable and the TRO should be rejected.</p> <p>What is needed are segregated paths for pedestrians and cyclists that meet official design standards.</p>	<p><u>accordance with clause E/3.5 which permits a minimum width of 2.0m where there are less than 200 users per hour. Whilst 3m or more would be ideal, and (sic) effective width of 2.5m still provides effective service, taking into account the constraints that exist. The available width in these locations ensures intervisibility between cyclists and pedestrians at the bends.</u></p> <p><u>See the General Arrangement Drawing Number WGSR-100 Rev P2 and clip below.</u></p> <p>[clip not reproduced here]</p> <p>Cyclists are expected to be moving slowly on the shared use footway/cycleways. Local Transport Note 1/20 states that shared use can be appropriate in certain situations and paragraph 6.5.6 lists one of these as being, "...At and around junctions where cyclists are generally moving at a slow speed, including in association with Toucan facilities...". This context is considered to be what is being proposed at the junction of Sherborne Road/Westgate but Parallel/Tiger crossings are proposed rather than Toucan crossings.</p> <p>There are short lengths of shared facilities on the eastern approach to the mini roundabout (along Westgate) where cyclists transition from off to on-carriageway and vice versa. These lengths of shared facility are short (approx. 25m each) and it is expected that cyclists speeds will be very low on these two sections – cyclists will be making the transitions in order to use the parallels crossing.</p> <p>The majority of cyclists shall continue to cycle on the carriageway along Westgate and additional measures are proposed to assist with this. The shared pedestrian cycle route provides a safe means of access for those less confident cyclists</p>
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	<p>and this route provides a safer means of negotiating the junction. Due consideration has been given through the design of the highway works to all road users including those that are more vulnerable to ensure that the scheme is appropriate for all; irrespective as to their level of mobility. <u>A Stage 1 Road Safety Audit (RSA) has been undertaken at planning stage and further RSAs will be undertaken at each relevant stage (Stage 2 Detailed Design & Stage 3 Scheme Completion) and acted upon as necessary. Appropriate signing, lining and tactile paving have been provided through detailed design consideration has been given to all reasonable safety measures.</u></p>
<p>2. Resident of Walnut Avenue</p> <p>the creation of sub standard shared cycle tracks around the Sherborne-Rd/Westgate junction (TRO items iii & iv) should be strongly opposed for the following reasons:</p> <ol style="list-style-type: none"> 1. Cyclists will round sharp blind corners when riding on narrow pavements directly into the paths of oncoming pedestrians. Because this design element particularly discriminates against young, vulnerable, disabled and elderly pedestrians, it contravenes the Equality Act 2010. 2. The appropriate legal procedures for conversion of pedestrian footways on existing pavements, into shared use cycle tracks, are not included or adhered to in Traffic Regulation Order CHS9038RC. 3. There has been inadequate consultation with disability groups over the proposed 	<ol style="list-style-type: none"> 1. <u>The available shared use width is 3.06 on the (western side) and 3.18m on the eastern side (see attached extract). The minimum width is therefore in accordance with LTN 1/20 Table 6-3 of 3.0m which the design adheres to for up to 300 cycles per hour. This ensures intervisibility between cyclists and pedestrians at the bends and/or the parallel crossing.</u> 2. Procedures for converting footways to shared use with cyclists have been followed. The procedure does not require the making of an order <u>However, ss (sic) mentioned in section 1 above, consultation with various interest groups was carried out as part of the planning and detailed design processes. The principle of these highway works were agreed through the granting of outline planning consent (CC/14/04301/OUT) by Chichester District Council (CDC) in April 2018. This planning application, which included the</u>

<p>conversion of urban pedestrian footways into shared use cycle tracks. 5</p> <p>The proposed cycle crossings are only half the width required by the Department for Transport (DfT) for connection with two way facilities.</p> <p>4. Give way markings will be painted on the shared use pavements forcing cyclists to look simultaneously forward, behind themselves and also sideways as they approach each and every driveway that exists across the pavements. It is unlikely cyclists lacking confidence can successfully perform such a demanding all round observation while balancing a bike riding on narrow pavements. However, WSCC claims this infrastructure is primarily intended to meet the needs of this type of cyclist.</p> <p>5. Parallel cycle crossings require drivers to see cyclists approaching crossings who intend to cross the road. However, in the proposed scheme, cyclists are expected to cycle along narrow shared use tracks running alongside the carriageway. As cyclists reach the crossings they may choose either to make an abrupt 90° turn into the road and over the crossings or otherwise continue along the pavement without turning. In this situation, it will be impossible for drivers to pre-empt the actions of the cyclist in proximity to the crossings and for them to safely react.</p> <p>Cyclists will also be expected to look both forwards at approaching motor traffic and simultaneously look back behind themselves to assess both the presence and intention of vehicles making complex manoeuvres around a mini roundabout. This is not something a</p>	<p><u>works to the junction of Sherborne Road and Westgate, was subject to the statutory consultation period by CDC and was ultimately determined by CDC in a planning committee public meeting. Additional consultation with relevant interested local groups was undertaken through the Infrastructure Steering Groups; referred to in more detail below.</u></p> <p>3. The developers are obliged to deliver these works through a Section 106 legal agreement. As part of this legal agreement the developer (Linden & Miller Homes) were also required to set up a Infrastructure Steering Group (ISG). This group consisted of representatives of local Residents Associations, officers of both West Sussex County Council and Chichester District Council and local elected Councillors and representatives of the relevant Residents Associations in the local area and was also attended by other interested groups such as Friends of Centurion Way and Bishop Luffa School. The purpose of this group was to comment on the detailed design matters and to ensure that the local community was aware of the proposals. Representatives of Westgate Residents Association have attended all ISG meetings and played an active part in engaging with the process and proposed designs of highway works. In terms of engagement, the ISG meeting is over and above what would normally occur through developer related highway works in the County and all residents associations in the locality have been kept up to date as the designs have developed.</p> <p>4. Where cycleway run parallel to the carriageway, when they join the carriageway, the cyclists should look out for traffic on the road,</p>
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<p>majority of cyclists can do in comfort and safety. The situation is worsened by the absence of separation strips between the shared use cycleway and the carriageway. This will leave virtually zero time between cyclists initiating a turn and transitioning onto the carriageway at the crossing. 8. Pavements proposed for conversion to shared use cycle tracks are significantly below minimum DfT widths for shared use.</p> <p>6. Inappropriate road markings are proposed within parallel crossing control areas. This does not comply with standards within the DfT Traffic Signs Manual 2019.</p> <p>7. If individuals/groups are making these decisions who neither cycle or walk, they will not realise that the days of respect of car drivers passing cyclists and cyclists passing pedestrians is depleted. Unless all road & Pavement users are policed and treated equally, unfortunately someone within the community is at risk of being hurt or disrespected and made to feel that they do not belong, ostracised or are not able to use these facilities with confidence. The biggest concern is that what is presently proposed allows the cars to be safe, but not the cyclist and pedestrians.</p> <p>8. Once again it feels that the car rules, and totally contradicts any effort to reduce emissions within residential areas. Surely more should be done to consider future residents and future generations.</p> <p>This is an opportunity to develop something really beautiful and functional for all users, considering the environment whilst also joining up roads, footpaths and cycle routes. In turn it will provide fantastic local leisure</p>	<p>give way and join when it is safe to do so. The give way marking are not dissimilar to other cycle facilities elsewhere in the county that have performed satisfactorily.</p> <p>5. On the western arm of the mini roundabout, hatched road marking have been provided to segregate cyclists from motorists. The same arrangement exists on the Westgate arm. Such layouts are common in West Sussex when cycleways parallel to the carriageway end and cyclists re-join the carriageway. These have performed satisfactorily. Speeds will also be low in the vicinity of parallel crossings. Local Transport Note 1/20 states that shared use can be appropriate in certain situations and paragraph 6.5.6 lists one of these as being, "...At and around junctions where cyclists are generally moving at a slow speed, including in association with Toucan facilities...". This context is considered to be what is being proposed at the junction of Sherborne Road/Westgate but Parallel/Tiger crossings are proposed rather than Toucan crossings. <u>Two road safety audits carried out, one at the planning application stage and the other at detailed design stage, did not raise concerns about this aspect of the scheme.</u></p> <p>6. Road markings within the controlled areas will be omitted.</p> <p>7. <u>As mentioned in section 1 above, there was consultation that led to granting of outline planning consent (CC/14/04301/OUT) by Chichester District Council (CDC) in April 2018. This planning application, which included the works to the junction of Sherborne Road and Westgate, was subject to the statutory consultation period by CDC and was ultimately determined by CDC in a planning committee</u></p>
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<p>facilities, tourism, help people's wellbeing and provide a long term investment for future generations and all people.</p>	<p><u>public meeting</u>. At detailed design stage, an Infrastructure Steering Group was formed that included local councillors, residents associations, cycle groups etc that had input into the design.</p> <p>8. Both at the planning stage and detailed design stage, consideration of the needs of all road users was taken and a balance amongst competing needs arrived at, including that of the young and less confident cyclists. The mini roundabout in its current format was seen as a barrier for less confident cyclists. The introduction of the parallel crossings is seeking to give pedestrian and cyclists priority over motor vehicles.</p>
<p>...</p>	
<p>4. Resident of Westgate</p> <p>Are very concerned that you are expecting to shoehorn existing levels of walking and cycling onto the narrow pavements which are not wide enough. This is the only viable and busy route for pedestrians into and out of the city centre.</p> <p>We already fear a collision with pedestrians every time we exit our driveways onto Westgate between Sherborne Road and Parklands Road. The conversion of the pavement into shared use with cycle tracks will only enhance the dangers. How can residents be expected to see cyclists approaching before exiting their driveways. We have enough problems looking over the roofs of parked cars to spot cyclists on the road now.</p> <p>Surely the pavement is not legally wide enough to accommodate a shared track, we have disability groups with wheelchairs, some with Canine Partner dogs as well as Guide dogs and the One Step Nursery uses double buggies to get</p>	<p>Cyclists are expected to be moving slowly around on the shared use footway/cycleways. Local Transport Note 1/20 states that shared use can be appropriate in certain situations and paragraph 6.5.6 lists one of these as being, "...At and around junctions where cyclists are generally moving at a slow speed, including in association with Toucan facilities...". This context is considered to be what is being proposed at the junction of Sherborne Road/Westgate but Parallel/Tiger crossings are proposed rather than Toucan crossings.</p> <p>Motorists exiting driveways will also need to do so at appropriate speeds that take into account mixed use nature of the shared use footway/cycleway.</p> <p>The majority of cyclists are expected to continue to cycle on the carriageway along Westgate and additional measures are proposed to assist with</p>

<p>along the pavements. They walk a Canine Partner dog and need the space for the dog to walk comfortably and not be frightened by cyclists rushing by.</p> <p>The junction of Sherborne Road and Westgate is a dangerous corner already as you are not able to see people coming around the corner.</p> <p>The Chicycle idea of a link road onto the A27 which is only 200 metres from the designated Southern Access Road anyway, would steer traffic away from this area and only allowing Public Service buses, cyclists and pedestrians to use the road leading up to the Sherborne Rd from Bishop Luffa School, would keep the traffic away from what will only become a rat run into Chichester centre. Surely this would calm the cycling area for road use and allow the pedestrians to be safe on the pavements.</p>	<p>this. The shared pedestrian cycle route provides a safe means of access for those less confident cyclists and this route provides a safer means of negotiating the junction. Due consideration has been given through the design of the highway works for all road users including those that are more vulnerable to ensure that the scheme is appropriate for all; irrespective as to their level of mobility. <u>A Stage 1 Road Safety Audit (RSA) has been undertaken at planning stage and further RSAs will be undertaken at each relevant stage (Stage 2 Detailed Design & Stage 3 Scheme Completion) and acted upon as necessary.</u> Appropriate signing, lining and tactile paving have been provided through detailed design consideration has been given to all reasonable safety measures.</p>
<p>...</p>	
<p>6. Resident of Fletcher Avenue</p> <p>Objects to some aspects of the plans at the SherbourneRd/Westgate mini roundabout. It is not appropriate to put cyclists onto the pavement and particularly because of the very poor visibility at the corners which will cause a significant collision risk between the two. As this is predictable the Council will find it hard to defend any claims for compensation for the inevitable injuries that will occur between cyclists and pedestrians and the potential for serious injury is high. The solution is simple and national guidance should be followed.</p>	<p>Please see section 1 above</p> <p><u>The width of pedestrian crossing is 2.4m on the Sherborne Road arm, whilst that for the cyclists is 1.8m. The Zebra crossing located west of the mini roundabout is 3.2m wide, which complies with guidance in Traffic Signs Manual Chapter 6.</u></p> <p><u>See the General Arrangement Drawing Number WGSR-100 Rev P2.</u></p>

<p>There need to be properly separated cycle lanes on the road carriageway or significantly widened pavements with clear segregated cycling lanes.</p> <p>Further, the width (length) of the proposed slightly elevated Parallel crossing humps is totally inadequate for dual use at 1.125 metres and should be at least double this width.</p>	
<p>...</p>	
<p>8. Resident of Haywards Heath</p> <p>Objects to the current proposals on Westgate, Westgate Roundabout and Avenue De Chartres.</p> <p>The proposed configuration at the junction of Westgate and Sherborne road is not sufficient. No proper thought has been put in for the provision of cyclists here, the current proposed two-way cycle crossing on the northern side is only 1.5m wide, where it ought to be 3 or more metres wide. In addition to this the visibility onto Sherborne Road is not sufficient.</p> <p>Agrees that cyclists should have priority here, however the current plans are not sufficient at providing priority to cyclists safely.</p> <p>...</p>	<p>As mentioned section 6 above, the pedestrian crossing width is 2.4m and that for the cyclists is 1.8m, which meets the requirements of cyclists expected to use the facility. The widths are in line with Traffic Signs Manual Chapter 6.</p> <p>...</p>

22. The reference to “LTN 1/20” at OR: Appendix C, Section 1, and elsewhere, is to Local Transport Note 1/20 of July 2020 *Cycle Infrastructure Design*, issued by the Department for Transport (“LTN 1/20”).

23. The reference to “CD 143” at OR: Appendix C, Section 1, and elsewhere, is to the part of the *Design Manual for Roads and Bridges* titled *Designing for walking, cycling and horse-riding* (version 2.0.1 of March 2021), published by Highways England (which is now National Highways) (“CD 143”).

24. The reference to the “Traffic Signs Manual Chapter 6” at OR: Appendix C, Section 6 and elsewhere is to the chapter titled *Traffic Control*, 2019, issued by the Department for Transport (“Traffic Control”).
25. Whereas at OR: Appendix C, Section 1, the OR states there had only been a “stage 1” road safety audit (“RSA”), at OR: Appendix C, Section 4, and elsewhere, the OR states there had also been a “stage 2” RSA. There was a Stage 1 RSA done as part of the planning application that led to the Outline Permission, but at that time none of the present proposals of concern to the Claimant were tabled. Equally, and contrary to the OR, the Shared Space proposals of concern were not within the many documents produced as part of the planning application that led to the Outline Permission and were not the subject of public consultation until the Notice (see Ground 2 below).
26. The reference to an “Infrastructure Steering Group” (“the ISG”) at OR: Appendix C, Section 2, and elsewhere, is a reference to an advisory group that was set up by the developer/landowner under the planning obligation entered into pursuant to s.106 of the TCPA 1990 alongside the Outline Permission. Any consultation with the ISG was non-statutory and was not public consultation.
27. The Claimant pursued the reference to a “stage 2” RSA with the Defendant, who on 17 December 2021 provided a Stage 2 RSA of 16 November 2020, not previously released publicly (“the Stage 2 RSA”).
28. The reference to “General Arrangement Drawing Number WGSR-100-Rev P2” at OR: Appendix C, Section 1, and elsewhere, is not explained there, nor elsewhere in the OR. However, the Stage 2 RSA contains a drawing titled “WGSR-100-Rev P1” and the Claimant pursued the point with the Defendant, who on 22 December 2021 provided drawing WGSR-100-Rev P2 dated 8 February 2021 (“WGSR-100-Rev P2”).
29. It appears that the “clip” in OR: Appendix C is taken from WGSR-100-Rev P1 or P2, but modified to indicate claimed widths for the Shared Space between the Eastern and Western Pillars and the carriageway of Sherborne Road.
30. The OR: Main Text says this at section 7 “Policy alignment and compliance”:
- 7.1 The introduction of the proposed restrictions is in accordance with the Road Traffic Regulation Act 1984 and causes no conflict with the Human Rights Act or the Crime and Disorder Act. Sussex Police has been consulted and raised no concerns in this respect.*

7.2 *There is social value to this scheme. The proposed restrictions are intended to promote more sustainable forms of transport by improving facilities for cyclists and pedestrians and comply with the aims of the West Sussex County Council Transport Plan.*

7.3 *The protected characteristics as defined in the Equality Act were duly considered in the course of the development and design of this TRO proposal. It is acknowledged that shared use infrastructure is a compromise solution but there is insufficient highway land to create standalone facilities in this location.*

(iii) Information provided subsequently by the Defendant

31. The Claimant considered the OR (which was published ahead of the Decision) and asked the Defendant about, *inter alia*, the approach taken to guidance and consultation, on 24 November 2021. His questions are set out in the Defendant's response, which it gave pursuant to the Freedom of Information Act 2010 ("the FOIA Response"), so far as most relevant as follows (Defendant's responses in **bold**) [CB/X]:

1) Will there be (or has there already been) a planning application that includes the finalised detailed plans for conversion of sections of Westgate/Sherborne pavements into shared use cycle tracks that are associated with the S106 agreement for 14/04301/OUT? If so, what is the planning application reference and where is it available?

Planning application CC/14/04301/OUT was the application which obtained the necessary planning consent for these highway works and was approved by Chichester District Council (CDC) as Local Planning Authority (LPA). All the details and documents submitted in relation to this planning application are publicly available on the CDC planning register (<https://www.chichester.gov.uk/viewplanningapplications>).

2) What opportunity for consultation will be given to disabled residents and/or organisations representing them, regarding conversion of sections of Westgate/Sherborne Rd pavement into shared use cycle tracks?

Planning application CC/14/04301/OUT, which effectively approved the proposed highway works, was subject to formal public consultation in line with the statutory requirements set out by National Government. This consultation was undertaken by CDC in their role as LPA. This enabled residents and

interested parties to comment upon and provide their views the proposals within the planning application. The application was also considered and determined by CDC councillors in a public meeting where members of the public could request to speak at the meeting.

The highway works were also subject to further local public consultation as WSCC as Highway Authority required that as part of the permission an Infrastructure Steering Group be set up. This enabled local groups and residents associations the opportunity to comment and help inform the detailed design of the off-site highway works associated with phase 1 of the West of Chichester development. The Traffic Regulation Orders associated with these works have also been subject to the necessary public consultation.

3) *What opportunity for consultation will be given to groups who represent pedestrians and cyclists regarding this proposed conversion of sections of Westgate/Sherborne Rd pavements into shared use cycle tracks?*

See above response to point 2.

4) *What opportunity for consultation will be provided for members of the general public who rely on safe Westgate/Sherborne footways being available for their journeys made on foot within the city?*

See above response to point 2 and 3.

5) *When will it be decided (or has it already been decided) to remove the legal classification of footway (under Section 66(4) Highways Act 1980) from the sections of Westgate/Sherborne Rd pavement being considered for conversion into shared use cycle tracks?*

WSCC haven't removed the footway status. Footway may be converted to shared use by a resolution of a Committee or as a consequence of Agreements under Section 278/38 of the Highways Act 1980 or Section 106 Town and County Planning Act 1990.

...

11) *(TRO) CHS9038RC includes parallel cycle crossings at Westgate/Sherborne Rd. These cycles crossings fail to meet numerous DfT standards and will inappropriately route cyclists onto narrow urban pavements, leading cyclists into*

conflict with pedestrians on blind corners of the pavement bound by brick walls and pillars. DfT strongly recommend disability groups are consulted before routing cyclists onto urban pavements and it is stated that engagement in this type of situation is a vital step for local authorities to meet their statutory duties under the 2010 Equality Act. Please list which parties representing disabled and/or vulnerable people have been actively consulted/engaged by WSCC over the (TRO) CHS9038RC proposals to route cyclists onto the Westgate/Sherborne Rd pavements?

Specifically in relation to consultation on the Traffic Regulation Order the West Sussex Association for Disabled People were consulted and are on all statutory consultations. They are a large forum representing the interests of disabled people across the whole of West Sussex. Additionally, the WSCC website is fully compliant with the accessibility regulations enabling general members of the public to provide representations so their views can be considered.

(emphasis added)

32. Then on 17 December 2021 the County Council's legal officer wrote to the Claimant, so far as relevant as follows regarding consultation [CB/X]:

The forum we engage with in our statutory consultations is the West Sussex Association for Disabled People. This is a large forum representing the interests of disabled people across the whole of West Sussex. They are alerted to the nature of the consultation, the date by which they need to submit any comments or responses, and a link to our website to view the consultation documents. The WSCC website is fully compliant with the accessibility regulations.

(emphasis added)

33. The West Sussex Association for Disabled People ceased to exist in 2012/2013.

34. It was after this email that the Defendant sent the Claimant the Stage 2 RSA.

LEGAL FRAMEWORK

35. As regards the Shared Space:

- (1) a highway authority has the power to create a cycle route in or alongside the carriageway of a highway maintainable at public expense, pursuant to s.65 of the Highways Act;
- (2) by contrast, a highway authority has a caveated duty to maintain a footway, pursuant to s.66 of the Highways Act, which Act distinguishes between “footway” and “footpath” (see s.329);
- (3) this is not a case falling within s.24 of the Highways Act (creation of an entirely new highway, which could be a cycle track), nor do the provisions of the Cycle Tracks Act 1984 apply, as those concern conversion of a footpath to a cycle track.

36. As regards the Crossings, which are to be on humps:

- (1) a highway authority may create humps on roads with a speed limit of 30mph or less pursuant to s.90A of the Highways Act (for “road hump” see s.90F(1));
- (2) section 90C of the Highways Act makes provision for consultation and publicity;
- (3) by s.90C(1), the highway authority must consult with: (a) the chief officer of police for the area in which the highway concerned is situated; and (b) such other persons or bodies as may be prescribed by regulations made by the Secretary of State;
- (4) section 90C(2) requires notice of road humps to be published and signs to be posted locally, and s.90C(3) sets a period of at least 21 days for objections to be received;
- (5) the regulations made under s.90C(1)(b) of the Highways Act are the Highways (Road Humps) Regulations 1999/1025, reg.3(1) of which mandates consultation with, in addition to the chief officer of police: (a) where the proposal is by a County Council, and district council in whose district the highway is located; (b) the local fire and rescue authority and the chief officer of any body providing NHS ambulance services in the area; and (c) *‘in all cases, organisations appearing to ...it...to represent persons who use the highway to which the proposal related, or to represent persons who are otherwise likely to be affected by the road hump’*.

37. By s.278 of the Highways Act, a highways authority may enter into an agreement with another that it carry out works that the authority is itself empowered to carry out, at the other’s cost. A “s.278 agreement” commonly accompanies a planning obligation pursuant to s.106 of the TCPA 1990 alongside a grant of planning permission.

38. Pursuant to s.149(1)(b) of the Equality Act 2010 (“the Equality Act”), the Defendant, as a public authority, owed a duty (“the Public sector equality duty” or “the PSED”) to:
- (1) ...in the exercise of its functions, have due regard to the need to—
 - (a) ...
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; ...
39. By s.149(7) the “protected characteristics” are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.
40. By s.149(3)-(4):
- (3) 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.
 - (4) 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.
41. Section 149(6) provides that compliance with the PSED may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under the Equality Act.
42. The PSED is a duty to have “due regard”, not to achieve a particular result.
43. When considering whether to grant permission for judicial review, the Court will apply the usual *Wednesbury* principles. The Court will not interfere with matters of judgment unless they are *ultra vires* on classic public law grounds, such as, for example, because the judgment is due to misinterpretation of such as relevant policy or guidance, or

legally flawed due to a failure to have regard to a mandatory material consideration, or mistake as to a material uncontentious/objectively verifiable (so “established”) fact, or follows a procedural breach, or because the judgments at issue are outside the range of reasonable decision-making.

44. Interpretation of policy or guidance is ultimately a matter of law, but policy or guidance is not a statement of legal principle or equivalent to statute or contract and is often couched in broad terms, sometimes with internal tension or even contradiction, and application of policy or guidance, correctly construed, is a matter for the judgment of the decision-maker (trite, but if authority is needed see *Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13; [2012] PTSR 983, *per* Lord Reed at [17] to [19] (LPC pp.311-312): although expressed in a planning context, the principles apply generally).
45. A matter may be a mandatory material consideration because it is made so expressly or by implication in the relevant statute or policy, or because on the particular facts it is a consideration so obviously material that it could not be overlooked (trite, but if authority is required, *R (Samuel Smith Old Brewery (Tadcaster) and anr) v North Yorkshire County Council* [2020] UKSC 3; [2020] PTSR 221, *per* Lord Carnwath JSC at [29] to [32], encapsulated at [32]: although expressed in a planning context, the principles apply generally).
46. As to mistake as to a material uncontentious/objectively verifiable (so “established”) fact, see *E v Secretary of State for the Home Department* [2004] EWCA Civ 49; [2004] QB 1044 at [66] (LPC at p.1071). Although expressed in an immigration context, the principles apply generally.
47. As to the correct approach to reports prepared by officers for a public authority committee or Member, where the officer recommendation is accepted the normal inference is that is for the reasons given in the officer report, whilst officer reports are to be read with reasonable benevolence, bearing in mind they are written for councillors with local knowledge: *R (Mansell) v Tonbridge & Malling BC* [2017] EWCA Civ 1314; [2019] PTSR 1452 at 1468 *per* Lindblom LJ at [42] (LPC at p.452). Although expressed in a planning context, the principles apply equally here.
48. As regards the standard of reasoning expected of a local authority, including in an officer report such as the OR where the decision-maker has accepted the recommendation and the normal inference applies, the reasoning must not give rise to

a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn; *per* Lord Carnwath JSC in *CPRE Kent v Dover DC* [2017] UKSC 79; [2018] 1 WLR 108 at 120-122, [35] to [42] (LPC, pp.472-474) (affirming Lord Brown in *South Bucks DC v Porter (No2)* [2004] UKHL 33; [2004] 1 WLR 1953 at 1964, [36] (LPC p.268): although expressed in a planning context, the principles apply generally).

49. As regards consultation, the principles identified by Mr Stephen Sedley QC in argument in *R v Brent London Borough Council, ex parte Gunning* [1985] 84 LGR 168 at 189 (“the *Gunning* Principles”) have been approved many times since, for example in *R (Wainwright) v Richmond Upon Thames London Borough Council* [2001] EWCA Civ 2062, *per* Clarke LJ at [9] to [10]:

First, that the consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third, that adequate time must be given for consideration and response, and finally, fourth that the product of consultation must be conscientiously taken into account in finalising any statutory proposals.

50. As to predetermination/appearance of bias, the test is that of the fair-minded and informed observer *per* Lord Hope in *Porter v Magill* [2001] UKHL 67; [2002] 2 A.C. 357, at [103] (trite):

The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.

GROUND 1

51. This ground is concerned with multiple errors of law, in three thematic groups.

First group: mistakes as to material established facts causing Defendant to rely upon erroneously overstated actual/effective widths for the Shared Space and/or misinterpretation of LTN 1/20

52. The Defendant reasoned, at OR: Appendix C, Section 1 (and elsewhere):

The available shared use width is 3.06m on the (western side) and 3.18m on the eastern side. LTN 1/20 Table 6-3 of 3.0m which the design adheres to for up to 300 cycles per hour. However, the existence of walls on the bends leaves effective widths of 2.5m at these locations. CD 143 Table E/3.4 states that a minimum effective width of 3m for an unsegregated shared footway/cycleway. This can be reduced in accordance with clause E/3.5 which permits a minimum width of 2.0m where there are less than 200 users per hour. Whilst 3m or more would be ideal, and (sic) effective width of 2.5m still provides effective service, taking into account the constraints that exist. The available width in these locations ensures intervisibility between cyclists and pedestrians at the bends. (emphasis added)

53. The Defendant's reference to 'effective widths of 2.5m' at the "bends" (i.e. by the Eastern and Western Pillars, where visibility was necessarily impaired) is a reference to the guidance in LTN 1/20, which by Table 5-3 requires a deduction from actual width of 0.5m for any obstruction over 600mm high, for the reasons given at paragraph 5.4.4:

5.5.4 Where a cycle track is bounded by a vertical feature, people will not be able to use the entire width as they will naturally be wary of riding immediately next to walls and kerbs. Designers should provide additional width as shown in Table 5-3.

54. However, the Defendant failed to have regard to the (pedestrian) crossing beacon columns shown on TRO 100 P1, and also on WGSR-100-Rev P2. These further reduced both the actual and effective widths, and the Defendant was mistaken as to established material fact: *E v SSHD* at [66] (LPC p.247). The "effective" width was well below the 2.5m the Defendant relied upon by reason of the crossing beacon columns alone.

55. Further, on the western side of Sherborne Road the Defendant incorrectly included in its measurement of actual width as 3.06m an area outside the Shared Surface, shown on TRO 100 P1 and WGSR-100-Rev P2 as BT inspection cover. That was a further mistake as to established material fact.

56. Further, on the eastern side of Sherborne Road, whereas the "clip" in OR: Appendix C shows a tarmac area from the Eastern Pillar to the carriageway, WGSR-100-Rev P2 shows an area of grass verge. That was a further mistake as to established material fact.

57. By reason of its failure to understand the drawings, the Defendant was mistaken as to established facts and this was material to its Decision, in that it relied upon erroneously overstated actual/effective widths for the Shared Space in order to justify it.

58. The only other possible explanation is that the Defendant misinterpreted LTN 1/20.

Second Group: misinterpretation (and so unlawful application) of CD 143 as regards the Shared Space

59. Even in the absence of the errors in the first group above, the Defendant recognised that the Shared Space widths it had calculated contravened LTN 1/20 minimum widths at Table 6-3 (LTN 1/20 p.68).

60. The failure was of particular significance given LTN 1/20 states *'Shared use routes in streets with high pedestrian or cyclist flows should not be used'* (paragraph 1.6.1(2)). Also *'A well constructed shared use facility designed to meet the needs of cycle traffic – including its width, alignment and treatment at side roads and other junctions – may be adequate where pedestrian numbers are very low'* (emphasis added) (paragraph 4.4.4 second bullet) and see too paragraph 5.5.3. Moreover, shared use should *'only be considered when options that reuse carriageway or other (e.g. verge) space have been rejected as unworkable'* (paragraph 5.5.3) and *'In urban areas, the conversion of a footway to shared use should be regarded as a last resort'* (paragraph 6.5.4).

61. The index location was urban and involved *'high pedestrian or cyclist flows'*.

62. As set out in the quote from OR: Appendix C at the start of the first group above, the Defendant sought to excuse the non-compliance it acknowledged with the minimum width requirements of LTN 1/20 as regards the Shared Space (which, as noted, was significantly less than the actual non-compliance) by relying upon CD 143. However, as the summary and “scope” to CD 143 explain, CD143 *'provides requirements and advice for'* and *'shall be used for'* the:

design of walking, cycling and horse-riding (facilities/routes) on and/or adjacent to the motorway and all-purpose trunk road network (emphasis added)

63. Neither Sherborne Road nor Westgate were or are motorways or trunk roads.

64. The Defendant misinterpreted CD 143 as applying to these circumstances, which it did not, and so had regard to an immaterial consideration.

65. Further, having erroneously relied upon CD 143, the Defendant misinterpreted the detailed guidance given by CD 143, which is in its Annex, even if one could overlook the fact that it is concerned only with motorways and the trunk road network.

66. The Annex to CD 143 says this regarding shared routes:

E/3.5.1 On segregated and unsegregated shared use routes for pedestrians and cyclists, the separation from the carriageway should be a minimum of:

- 1) 1.5 metres on roads with a speed limit greater than 40mph; or
- 2) 0.5 metres on roads with speed limits of 40mph or less. (emphasis added)

67. As shown on TRO 100 P1 and WGSR-100-Rev P2, at numerous points on Westgate any separation between the carriageway and the Shared Space would be less than 0.5m.

68. The Defendant also failed to appreciate the non-compliance with CD 143 as regards its requirements for visibility splays, at E/5.1, E/5.2 and Table E/5.2. “Give way” lines are shown on TRO 100 P1 and WGSR-100-Rev P2 for property driveways across the Shared Space east of the Westgate Crossing, on both sides of Westgate. However, no visibility splays compliant with CD 143 are possible due to lack of space.

69. The Defendant failed to appreciate these non-compliances with the requirements of CD 143, in circumstances in which it unlawfully sought to apply CD 143 to excuse non-compliance with LTN 1/20.

Third group: misinterpretation of Traffic Control to (erroneously) justify the widths of the cycle elements of the Crossings

70. The Defendant reasoned (at OR: Appendix C, Sections 6 and 8) that:

The width of pedestrian crossing is 2.4m on the Sherborne Road arm, whilst that for the cyclists is 1.8m. The Zebra crossing located west of the mini roundabout is 3.2m wide, which complies with guidance in Traffic Signs Manual Chapter 6.

...

As mentioned section 6 above, the pedestrian crossing width is 2.4m and that for the cyclists is 1.8m, which meets the requirements of cyclists expected to use the facility. The widths are in line with Traffic Signs Manual Chapter 6.

71. However, the Defendant misinterpreted the requirements of Traffic Control, which at 17.2.6 states that where the cycle route is two-way the minimum width for the cycle crossing element should be 3m, in addition to the 2.4m required for the pedestrian crossing element. The cycle elements on both Crossings were to be two-way.

72. The Defendant relied upon its misinterpretation of Traffic Control in order to (erroneously) justify the widths of the cycle elements of the two Crossings.

GROUND 2

73. This ground has two limbs, both concerned with consultation.

First limb: breach of PSED by reason of failure to consult with organisation representing the disabled and/or organisation/s representing other vulnerable pedestrians

74. The PSED has been summarised above. Given the nature of the Shared Space, in order to discharge its duty to have “due regard” it was necessary for the Defendant to consult with organisations representative of the disabled and vulnerable pedestrians, including children and the elderly. The need to do so was underlined by LTN 1/20:

6.5.4 In urban areas, the conversion of a footway to shared use should be regarded as a last resort. Shared use facilities are generally not favoured by either pedestrians or cyclists, particularly when flows are high. It can create particular difficulties for visually impaired people. Actual conflict may be rare, but the interactions between people moving at different speeds can be perceived to be unsafe and inaccessible, particularly by vulnerable pedestrians. This adversely affects the comfort of both types of user, as well as directness for the cyclist.

6.5.5 Where a shared use facility is being considered, early engagement with relevant interested parties should be undertaken, particularly those representing disabled people, and pedestrians and cyclists generally. Engaging with such groups is an important step towards the scheme meeting the authority’s Public Sector Equality Duty. (emphasis added)

75. The Defendant has acknowledged, by implication, that it was necessary to consult with an organisation representing the disabled, through its post-Decision communications with the Claimant (set out above) in which it asserted that it had consulted with the West Sussex Association for Disabled People (“the WSADP”). However, that organisation had ceased to exist many years ago. Moreover, CDAG’s attempts to engage with the Defendant regarding the issues of concern were rebuffed.

76. The Defendant failed to consult with an organisation representative of the disabled, and as a result in the circumstances of this case, not least the Government guidance given in LTN 1/20 and its own implicit acknowledgment of the need to consult, so failed to discharge the PSED.

77. The Defendant also failed to consult with an organisation or organisations representative of other vulnerable pedestrians by reason of their age, namely the young and the elderly, which was a further breach of the PSED.

Second limb: Defendant erroneously believed there had been public consultation on the Junction proposals of concern to the Claimant (and others) before the grant of the Outline Permission, and erroneously relied upon that same non-existent consultation and/or predetermined the Decision.

78. The Defendant reasoned (OR: Appendix C, Section 2):

consultation with various interest groups was carried out as part of the planning and detailed design processes. The principle of these highway works were agreed through the granting of outline planning consent (CC/14/04301/OUT) by Chichester District Council (CDC) in April 2018. This planning application, which included the works to the junction of Sherborne Road and Westgate, was subject to the statutory consultation period by CDC and was ultimately determined by CDC in a planning committee public meeting. (emphasis added)

79. Contrary to the Defendant's understanding, the proposals of concern to the Claimant and the many other objectors whose views are set out at OR: Appendix C were not tabled at the time the application that led to the Outline Permission came before the District Council, were not the subject of public consultation and were not decided on by the District Council's Planning Committee when it resolved to grant permission subject to suitable conditions and a suitable planning obligation. Based on the RSA information the Defendant has passed him since the Decision, the Claimant understands these proposals came to be tabled within the confines of the s.106, away from public view or consultation.

80. At the planning application stage, the high water mark of what was published for public consumption was some indicative drawings within a mitigation package worked up by the applicant's transport consultants, Vectos. This indicative work did not include the Shared Space of concern at the Junction, for which areas it in fact showed segregated cycle track, only showing shared space at the uncontentious south-western side of the Junction, and showed crossings without measurements.

81. Given the complexity of what was presented in connection with the application for the Outline Permission, that is set out in an Annexe.

82. The Defendant's exchange with CDAG on the last day of the Notice consultation has been set out above. The clear tenor of that, is that the Defendant had already closed its mind regarding the Shared Space at least.

83. In the circumstances, the Defendant's consultation on the proposals either failed the Gunning Principles, because the proposals ought to have been subject to public consultation, but were not, yet the Defendant erroneously believed they had been, or the Defendant unlawfully predetermined matters, prior to consultation on the Notice.

OTHER APPLICATIONS, RELIEF SOUGHT AND CONCLUSION

84. This is an Aarhus Convention claim within CPR r. 45.41(2) and the Claimant respectfully seeks an order for the default limit of £5,000 in respect of adverse costs and £35,000 in respect of his own costs.

85. As to relief, the Claimant seeks:

Permission stage

- (i) An order granting permission to apply for judicial review on all grounds;
- (ii) An Aarhus claim costs capping order (with a cap of £5,000 on the Claimant's costs liability and a cap of £35,000 on the Defendant's costs liability);

Thereafter

- (iii) An order quashing the Decision, at least in so far as it concerns the proposals at and immediately associated with the Junction, or the Decision in its entirety if the Defendant contends those aspects cannot be divorced from the rest;
- (iv) Such other order as the Court considers it appropriate to make; and
- (v) An order requiring the Defendant to pay the Claimant's costs subject to the costs cap (or the Claimant's costs in full if the claim is not found to be an Aarhus claim).

86. For the reasons set out above, this claim is arguable and identifies serious flaws in the Defendant's decision-making. The Court is respectfully asked to grant permission on all of the Grounds pleaded.

James Burton
39 Essex Chambers, 81 Chancery Lane, WC2A 1DD
23 December 2021

ANNEX: THE OUTLINE PERMISSION

1. The Outline Permission has the following operative wording:

Outline planning application with all matters reserved (except for access) for the first phase of development for up to 750 homes with access from Old Broyle Road, temporary access from Clay Lane, a local centre (with associated employment, retail and community uses), primary school, informal and formal open space (including a Country Park), playing pitches, associated landscaping, utilities and drainage infrastructure with on site foul sewage package treatment plant or pumping station with connection to Tangmere Waste Water Treatment Works.

(at) Land West Of Centurion Way And West Of Old Broyle Road Chichester West Sussex PO19 3PH

2. Prior to the grant of the Outline Permission it was the subject of a resolution to grant, subject to suitable conditions and a suitable planning obligation pursuant to s.106 of the TCPA 1990, made by the District Council's Planning Committee on 11 November 2016. At that meeting, the major controversy concerned the timing of the "southern access" for the development site (it apparently not being strictly necessary for "Phase 1", but desired by many as early as possible). The Planning Committee then received updates regarding the planning obligation on 26 April 2017, 19 July 2017 and 15 November 2017 (which updates are not relevant for present purposes).
3. Condition 3 to the Outline Permission was and remains (although there are approvals of certain non-material amendments to the Outline Permission on the District Council's public access planning pages, none relate to Condition 3) as follows:

3) The development hereby permitted shall be carried out in accordance with the approved plans in so far as they relate to the matters of detail hereby approved:

LL-225-P-005 rev A - Phase 1 red line boundary

LL-225-P-101 rev E - Framework Plan Phase 1

LL-225-P-151E - Parameter Plan - Street Hierarchy Phase 1

LL-225-P-152E - Parameter Plan - Storey Heights Phase 1

LL-225-P-153E - Parameter Plan - POS and Drainage Phase 1

LL-225-P-154E - Parameter Plan - Land Use Phase 1

LL-225-P-155E - Parameter Plan - Footpath and Cycleways Phase 1

LL-225-P-156E - Parameter Plan - Quantum Development Phase 1

110013/A/53 - Old Broyle Road site access

110013/A/55 - Clay Lane site access

110013/A/36 rev C - Emergency access off Old Broyle Road

4. How that Condition 3 should be interpreted, given the only non-reserved matter was access, is moot. However, there is also Condition 37, as follows:

37) The details of the reserved matters submitted pursuant to this permission shall be in conformity with the Parameter Plans LL-225-P-101 rev E - Framework Plan Phase 1; LL-225-P-151E - Parameter Plan - Street Hierarchy Phase 1; LL-225-P-152E - Parameter Plan - Storey Heights Phase 1; LL-225-P-153E - Parameter Plan - POS and Drainage Phase 1; LL-225-P-154E - Parameter Plan - Land Use Phase 1; LL-225-P-155E - Parameter Plan - Footpath and Cycleways Phase 1; LL-225-P-156E - Parameter Plan - Quantum Development Phase 1.

5. There are no relevant s.96A non-material amendments regarding condition 37.
6. Of the listed approved plans/drawings, none concern the Junction, including LL-225-P-155E - Parameter Plan - Footpath and Cycleways Phase 1, which is unsurprising, because the redline did not include the Junction. The Junction lies some hundreds of metres to the south-east of the southernmost part of the redline.
7. There are 107 different entries on the District Council's public access website concerned with the Outline Permission, none of which suggest a relevant s.96A non-material amendment to the Outline Permission, nor a s.73 "variation" permission. The only s.96A non-material amendments are: (1) alteration of the wording of conditions 10 and 12 (concerning sewage and waste water) granted on 6 December 2019; (2) alteration of the wording of condition 33 (concerning sports pitches), granted on 15 January 2020; (3) addition of a condition 38 in respect of temporary sales and marketing facilities, granted on 10 March 2020. None are relevant. Nor is the approval of reserved matters for primary infrastructure and SANGs.
8. The Junction was, along with other items, the target of "mitigation" for the proposed scheme, eventually to be the subject of a planning obligation pursuant to s.106 of the TCPA 1990, however nothing that was publicised prior to the resolution of the Planning

Committee in November 2016, nor the grant of the Outline Permission in April 2018, proposed the matters of concern to the Claimant.

9. The first relevant explanation of the mitigation is a 19 October 2015 letter from Vectos, the applicant's transport consultants, as follows:

Westgate/Sherborne Road Junction

10. This is a mitigation scheme that provides improvements for pedestrians and cyclists at the junction as well as increased vehicle capacity. The modifications include the introduction of a segregated left turn lane for traffic turning left from the southern approach to the junction into Westgate. The layout of the junction is shown on Drawing No 110013/A/38/ Rev F.

10. The drawing referred to (which is at internal electronic page 15) shows nothing concerning shared pedestrian/cycle space, either on what is presently footway nor for crossing the roundabout, nor crossings, and, as the text quoted above reflects, was concerned with measures in relation to vehicular traffic. .
11. In January 2016, Vectos presented a design audit of the proposed junction, based on drawing 110013/A/38/ Rev F.
12. By February 2016 matters had evolved, in that Vectos presented three "options" for the junction, including Option 1 shown by drawing 110013/A/38/ Rev G. Again, there was no reference to shared pedestrian/cycle space nor to crossings.
13. That was reflected in comments from ChiCycle, of 5 April 2016, from ChiCycle's Sarah Sharp, which whilst addressing the Junction necessarily did not address any proposal for shared pedestrian/cycle space or crossings, as there was none.
14. The County Council, as highway authority, provided comments on 25 April 2016, which so far as relevant were that:
 - (1) It was understood that off-site highway arrangements would be approved as part of "access", for which permission was being sought, but the District Council should confirm.
 - (2) As regards the Westgate/Sherborne Road mini-roundabout, a "two phase" approach was 'required', with the current form maintained during Phase 1 of the proposed development but that *'improvements to facilitate segregated pedestrian and cycle access will be required; this could take the form of a 'Tiger Crossing'*

across the raised area on the northern and western arms that are shown on 110013/A/38, which would also require motorists to keep this area clear for crossing whilst queuing at the junction. The spur to the south of the southern entry would not be incorporated into the Phase 1 design...As part of Phase 2...any Phase 2 submission would require the incorporation of proposals to segregate the southern access road from its connection with the Sherbourne mini-roundabout. Access for buses, cyclists and pedestrians between the southern access and Westgate would need to be maintained. Such measures would require formal public consultation, and the LHA would recommend early informal consultation with affected parties...Widening of the southern arm in order to provide a 2 lane approach should be incorporated into Phase 1...'

15. In May 2016, Vectos produced a further document, which at its Appendix E contained a drawing for the Westgate/Sherbourne Road mini-roundabout, ref. 110013/A/70 REV A entitled "Option 2" that did now refer to shared cycleway/footway but only on the south-western side of the Junction (marked in red), so not of concern and, in particular, not the northern, eastern and western arms the subject of the Claimant's and ChiCycle's concerns, where in fact it showed segregated cycle routes. It did now show parallel cycle and pedestrian crossings, but without dimensions.
16. ChiCycle made further comments on the Outline Application under the heading "Highways Inputs", via an email from Dominic Smith on 12 August 2016, sent on by Councillor Sarah Sharp to "DC Planning" on 27 August 2016. Although those comments refer to the Junction, necessarily they did not tackle the proposals of concern, as they were not proposed.
17. On 3 October 2016 the District Council uploaded a revision C of the "Option 2" drawing to its public access website. That showed little change (the material addition is that it shows visibility lines, but only for the non-contentious shared surface in the south-west, and still showed nothing by way of shared surfacing to the northern, eastern and western arms of the Junction).
18. The matter then came before the District Council's Planning Committee for the decisive meeting on 11 November 2016.

19. There is nothing to suggest the proposals for the Junction had somehow evolved into the present proposals of concern. The Planning Officer Main Report for the meeting of the District Council's Planning Committee on 11 November 2016 said this at 3.6:

3.6 The following off-site highway drawings also form part of the application: - Old Broyle Road site access, Clay Lane site access, car park/emergency access off Old Broyle Road, Westgate roundabout improvement scheme incorporating a signalised junction, Cathedral Way roundabout improvements, Westgate (east) improvements, Brandy Hole Lane, St Paul's Road right hand turn, Sherborne Road proposed traffic calming, Westgate/Sherborne Road mini roundabout improvements, Clay Lane/Fishbourne Road East junction modification and gateway feature on Old Broyle Road.

20. Then this at pages 37-38:

Sherborne Road/Westgate Mini-Roundabout

As there will not be a material intensification of movement through the Westgate (west) arm of the existing mini-roundabout, the type of junction is to retain its current form for Phase 1 with a number of modifications.

The junction forms part of the pedestrian and cycle corridor from the site through to Chichester City Centre. There are two route options available for cyclists; continuation of the journey using the modified Westgate (east) carriageway, or to the south to utilise the existing off-road route adjacent to Cathedral Way.

Concern has previously been expressed regarding safety of cyclists having to cross the miniroundabout, particularly during peak operation when the junction can become blocked. The Applicant has proposed a scheme of works, shown on drawing 110013/A/70, which provide off-road crossing facilities for cyclists and pedestrians.

Parallel crossings are proposed on the approach to Sherborne Road (north) and Westgate (east) arms of the roundabout. This is a type of infrastructure similar to a zebra crossing, which provides a segregated crossing for cyclists adjacent to the pedestrian element of the crossing.

During peak periods, queuing back from Cathedral Way roundabout does frequently occur. This may obscure visibility to pedestrians crossing. The WSCC

Signals Engineer has indicated that an island should be explored as part of the detailed design, to enable a two phase crossing manoeuvre and improve visibility to pedestrians who may be emerging from behind a stationary vehicle.

The Signals Engineer has indicated that the type of crossing over Westgate should be explored further as part of the detailed design process, to ensure an optimal solution is provided.

It is not possible to install a parallel crossing on the Sherborne Road (south) arm. The Applicant proposes to enhance the existing crossing provision by improving the achievable visibility and introducing a central refuge island to enable crossing of the carriageway in two phases. The island is of sufficient width to allow a pedestrian with a cycle to stand clear of the carriageway.

An RSA has been undertaken on the proposed arrangement. Problems relating to positioning of the crossing, restriction of visibility splays and confusion caused by conflicting road markings have been raised. The Designer has accepted the problems and amended the design in accordance with the Auditor recommendations.

21. At internal page 43 officer recommended various planning obligations pursuant to s.106 of the TCPA 1990, including *'Delivery of junction improvement scheme at Westgate/Sherborne Road junction'*.
22. The minutes of the meeting of the District Council's Planning Committee on 11 November 2016 record the following of apparent relevance, seemingly reflecting officer advice, albeit "Mr Smith" is not listed as present:

Mr Smith explained that with regard to the test in paragraph 32 of the NPPF concerning severe transport impact and a comment made that 'severe' equated to a 30% increase, this percentage was not a recognised threshold within the NPPF. In fact, the bar set through planning appeal decisions in respect of severe impact from a development was very high. With regard to the sustainability of the site, the proposals were led by the Local Plan and it was not a standalone development. A series of wide ranging highway works would be required to be delivered. These improvements would be secured through the Section 106 agreement, and also financial contributions towards cycle routes to the north of the site, as well as through the CIL contribution, which would fund much larger projects such as the

Northgate gyratory. Developer delivered works would be required specifically to mitigate the impact of the development to include junction improvements at Westgate, traffic calming along Sherborne Road, Westgate itself and a range of other improvements to support the development.

23. Matters then appear to progress through the planning obligation pursuant to s.106 of the TCPA 1990, entered into as an agreement (“the S106”), rather than via public consultation.

24. The S106, made on 11 April 2018, at Schedule 2, paragraph 2 (internal pages 94-96) imposed this obligation on the developer/landowners as regards highway works:

2. HIGHWAY WORKS

2.1 To undertake a Stage 2 Safety Audit and Stage 3 Safety Audit in respect of the Highway Works.

2.2 To submit a Highway Works Scheme for approval in writing by the County Council in respect of:

2.2.1 items 1 and 2 within the definition of the Highway Works no later than one (1) month prior to Commencement of Development; and

2.2.2 items 3 and 4 within the definition of the Highway Works no later than three (3) months following Commencement of Development; and

2.2.3 items 5, 6, 7, 8, 9 and 10 within the definition of the Highway Works no later than six (6) months following Commencement of Development.

PROVIDED THAT where a Highway Works Scheme is submitted to the County Council which is not approved a revised Highway Works Scheme shall, within 14 days of receipt of notice in writing from the County Council that the previous Highway Works Scheme is not approved, be submitted to the County Council for approval.

2.3 Once the County Council has approved a Highway Works Scheme (“the Approved Highway Works Scheme”) to obtain All Requisite Consents, including without limitation (where necessary) entering into a Highway Agreement(s) with the County Council.

2.4 After All Requisite Consents have been obtained to carry out in fully the Approved Highway Works Scheme...

2.5 Not without the consent of the County Council to allow:

2.5.1 First Occupation of any Dwelling Unit in the Proposed Development until Items 1 and 2 within the definition of Highway Works have been completed to the satisfaction of the County Council.

...

2.5.4 Occupation of the 140th Dwelling Unit in the Proposed Development until items 5, 6, 7, 8 and 9 within the definition of Highway Works have been completed to the satisfaction of the County Council.

25. The “Highway Works” are defined, so far as relevant, at clause 1, referring to various highways drawings said to be “indicative” *‘or as otherwise agreed in writing by the County Council’*, of which Drawing No.7 shows the Junction. There is now greater definition on the Drawing No.7, but it is the same “Revision C” as uploaded on 3 October 2016.
26. Also within Schedule 2 to the S106, paragraph 8 to Schedule 2 imposes an obligation to establish an “Infrastructure Steering Group”.
27. An attempt to vary the S106 as regards highways works item 5 was made in December 2020 but then withdrawn (it is inaccurately badged as concerning Schedule 1).
28. The District Council’s webpage for the Outline Permission contains various notices that obligations under the S106 have been discharged, but none are in respect of Schedule 2, paragraph 2.
29. The Notice Drawings are the first time the public was presented with proposals for the contentious Shared Space and with detailed Crossings, including beacon columns.