

Case No: C1/2010/0771

Neutral Citation Number: [2011] EWCA Civ 157  
**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**(Mr. Michael Supperstone Q.C.)**  
**[2010] EWHC 797 (Admin)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 22 February 2011

**Before :**

**LORD JUSTICE MUMMERY**  
**LORD JUSTICE MOORE-BICK**  
and  
**LORD JUSTICE JACKSON**

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**Between :**

	<b>THE QUEEN</b> <b>(on the application of BATEMAN)</b>	<b><u>Claimant/</u></b> <b><u>Appellant</u></b>
	<b>- and -</b>	
	<b>SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL</b>	<b><u>Defendant/</u></b> <b><u>Respondent</u></b>
	<b>- and -</b>	
	<b>CAMGRAIN STORAGE LIMITED</b>	<b><u>Interested</u></b> <b><u>Party,</u></b>

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(Transcript of the Handed Down Judgment of  
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Official Shorthand Writers to the Court)  
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**Mr. Richard Drabble Q.C. and Ms. Sasha Blackmore** (instructed by **Richard Buxton**) for the  
**appellant**

**Mr. Meyric Lewis** (instructed by **South Cambridgeshire District Council**) for the **respondent**

**Mr. Robert McCracken Q.C.** (instructed by **Kester Cunningham John**) for the **interested**  
**party**

Hearing dates : 14<sup>th</sup> January 2011  
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## **Judgment Lord Justice Moore-Bick :**

1. This is a claim for judicial review which Sullivan L.J. directed should be retained in this court following the grant of permission to proceed made on an application for permission to appeal. The claimants, Dr. and Mrs. Bateman, seek an order quashing a grant of planning permission by South Cambridgeshire District Council (“the Council”) in favour of Camgrain Storage Ltd (“Camgrain”) for the extension of a grain storage and handling facility situated near the village of West Wrating close to the A11 trunk road. The grounds on which they seek that relief are that the decision of the Council’s planning officer contained in a screening opinion issued on 17<sup>th</sup> April 2009 that an environmental impact assessment (“EIA”) was not required in respect of the proposed development failed to comply with the requirements of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) 1999 Regulations (“the Regulations”) and that the grant of planning permission was therefore unlawful.
2. Camgrain is an agricultural co-operative established as an industrial and provident society. Between 2008 and 2009 it constructed a new storage facility comprising 12 silos and associated buildings with the capacity to handle 90,000 tons of grain on a site next to Wilbraham chalk pit. The business proved very successful and by early 2009 Camgrain had already developed plans to expand the store at West Wrating to create an advanced storage and processing centre capable of handling 300,000 tons of grain. That involved the construction of 60 additional silos, 6 additional holding bins and 4 additional bulk bins. Each of the metal silos is about 18 metres high and about 23 metres in diameter, but the site had been levelled by cutting back into the hillside, and it was proposed that the visual impact of the development would be further reduced by planting new trees and other landscaping measures. Grain would be carried to and from the facility in lorries, being taken in during the harvest and despatched at intervals over the rest of the year. The proposed expansion would therefore inevitably cause a large increase in the number of lorry movements over the course of each year.
3. The Regulations implement the provisions of Council Directive 85/337/EEC on assessing the effect on the environment of certain development projects. Regulation 5(1) provides that a person who is minded to carry out development may request the planning authority to adopt a screening opinion, that is, a written statement of the opinion of the authority whether an EIA is required. An EIA is required in the case of any development falling within Schedule 1 to the Regulations and any development falling within Schedule 2 which is likely to have significant effects on the environment by virtue of factors such as its nature, size or location: see Regulation 2(1). It is common ground that the proposed development falls within Schedule 2. The critical question, therefore, is whether it was likely to have significant effects on the environment and in reaching its decision on that question the planning authority was required to have regard to the criteria set out in Schedule 3. These include the size of the development, the cumulation with other development and the environmental sensitivity of the geographical areas likely to be

affected.

4. On 12<sup>th</sup> March 1999 the Secretary of State for the Department for Communities and Local Government published Circular 02/99 giving guidance to local planning authorities on the implementation of the Regulations. Paragraphs 33 and 34 of the Circular have assumed some importance in this case. They provide as follows:

“33. As a starting point, authorities should study Schedule 3 to the Regulations (reproduced at Annex B to this Circular) which sets out the ‘selection criteria’ which must be taken into account in determining whether a development is likely to have significant effects on the environment. Not all of the criteria will be relevant in every case. It identifies three broad criteria which should be considered: the characteristics of the development (eg its size, use of natural resources, quantities of pollution and waste generated); the environmental sensitivity of the location; and the characteristics of the potential impact (e.g. its magnitude and duration). In the light of these, the Secretary of State’s view is that, in general, EIA will be needed for Schedule 2 developments in three main types of case:

a. for major developments which are of more than local importance (paragraph 35);

b. for developments which are proposed for particularly environmentally sensitive or vulnerable locations (paragraphs 36-40); and

c. for developments with unusually complex and potentially hazardous environmental effects (paragraphs 41-42).

34. The number of cases of such development will be a very small proportion of the total number of Schedule 2 developments. It is emphasised that the basic test of the need for EIA in a particular case is the likelihood of significant effects on the environment. It should not be assumed, for example, that conformity with a development plan rules out the need for EIA. Nor is the amount of opposition or controversy to which a development gives rise relevant to this determination, unless the substance of opponents’ arguments reveals that there are likely to be significant effects on the environment.”

5. By letter dated 27<sup>th</sup> March 2009 Savills applied to the Council on behalf of Camgrain for a screening opinion in relation to the proposed development. The letter and its appendices contained a description of the development, including drawings and site plans. Savills submitted that it was not of more than local importance, was not in an environmentally sensitive or vulnerable location and was not unusually complex and did not give rise to potentially hazardous environmental effects. They then addressed in detail the criteria set out in Schedule 3 to the Regulations and suggested that the main impact of the proposed development was likely to be in landscape and transport terms, which would be addressed through the necessary landscape and transport assessments when the planning application was submitted. An application was in fact submitted on 9<sup>th</sup> April 2009.

6. On 17<sup>th</sup> April 2009 the Council replied stating that in its opinion the proposed development would not be likely to have significant effects on the environment and that an EIA was not required. The letter was accompanied by a statement from a Senior Planning Officer giving the following reasons for the decision (with numbering added for ease of reference):

- “1. The site lies within the countryside and beyond the West Wrating village framework, as defined in the South Cambridgeshire Local Development Framework 2007. The proposed application site, as enlarged, extends to 11.3 hectares, and the proposal involves the creation of an additional 210,000 tonnes of storage (60 new storage silos), a 3000m<sup>2</sup> extension to the flatstore facility, new holding bins and plant house and driers.
2. The size of the facility, as extended, exceeds the 5 hectare and 10,000m<sup>2</sup> limits suggested within paragraph A19 of Annex A of Circular 02/99. However, these suggested limits particularly apply to previously undeveloped sites. It may therefore be more appropriate to consider the threshold suggested within paragraph A17, which states that an EIA is more likely to be required if the site exceeds 20 hectares, in which case the site, as extended, would be well under this threshold.
3. The site is not within the floodplain or in an area of high-medium flood risk, no public right of way is affected by the proposal, and there are no Tree Preservation Orders within the site. In addition, the proposal does not affect a Scheduled Ancient Monument and the development is not within an environmentally sensitive area.
4. The main impacts of the development are likely to be: increase in traffic movements, landscape impact, and noise disturbance to nearby residents. Transport, Landscape and Noise

Assessments are to be provided with the application.

5. Having regard to the selection criteria in Schedule 3 to the Regulations, particularly noting the size of the development, cumulation with the existing development and potential impact, it is considered that this major development will not have more than local importance, will not be proposed for a particularly environmentally sensitive or vulnerable location, and will not have unusually complex and potentially hazardous environmental effects.”

7. Planning permission for the development was subsequently granted on 9<sup>th</sup> July 2009, subject to certain conditions.

8. Mr. Drabble Q.C. for the claimants submitted that the screening opinion should be quashed because it is illogical and irrational and does not contain sufficient reasoning to satisfy the requirements of the Regulations and the directive. It is convenient, therefore, to begin a consideration of his submissions by identifying what those requirements are.

9. Regulation 4(6) requires a local planning authority which decides that a development requires an EIA to provide a written statement giving clearly and precisely the full reasons for that conclusion, but the Regulations impose no comparable duty in a case where the authority decides that an EIA is not required. However, in *R (Mellor) v Secretary of State for Communities and Local Government* (Case C-75/08), [2010] Env. L.R. 18 the European Court of Justice confirmed that a decision that a development did not require an EIA must contain or be accompanied by sufficient information to make it possible to check that it was based on adequate screening carried out in accordance with the directive. The court held that it is necessary for third parties, as well as the administrative authorities concerned, to be able to satisfy themselves that the competent authority has actually determined, in accordance with the rules laid down by national law, that an EIA was or was not necessary and for them to have sufficient information to enable them to challenge the decision by legal proceedings, if that is thought appropriate.

10. The following passages in the judgment are of particular relevance:

“59. . . . effective judicial review, which must be able to cover the legality of the reasons for the contested decision, presupposes in general, that the court to which the matter is referred may require the competent authority to notify its reasons. However where it is more particularly a question of securing the effective protection of a right conferred by Community law, interested parties must also be able to defend that right under the best possible conditions and have the possibility of deciding, with a full knowledge of the

relevant facts, whether there is any point in applying to the courts. Consequently, in such circumstances, the competent national authority is under a duty to inform them of the reasons on which its refusal is based, either in the decision itself or in a subsequent communication made at their request . . .

60. That subsequent communication may take the form, not only of an express statement of the reasons, but also of information and relevant documents being made available in response to the request made.

. . .

63. While as is clear from the reply to the first question, the reasons need not necessarily be contained in the determination not to carry out an EIA itself, the competent administrative authority can, under the applicable national legislation or of its own motion, indicate in the determination the reasons on which it is based.

64. In that case, the determination must be such as to enable interested parties to decide whether to appeal against the determination in question, taking into account any factors which might subsequently be brought to their attention.

65. It cannot, in those circumstances, be ruled out that in the case in the main proceedings the Secretary of State's reasons might be considered sufficient, taking into account, in particular, factors which have already been brought to the attention of interested parties, provided that the latter can ask for and obtain from the competent authorities, subject to judicial review, the necessary supplementary information to fill any gaps in that reasoning.”

11. In *R (Friends of Basildon Golf Course) v Basildon District Council* [2010] EWCA Civ 1432 Pill L.J., with whom Carnwath and Rimer L.JJ. agreed, emphasised in paragraph 62 of his judgment that the decision taken on a screening opinion must be carefully and conscientiously considered and must be based on information which is both sufficient and accurate. The opinion need not be elaborate, but must demonstrate that the issues have been understood and considered.

12. Mr. Drabble made a number of criticisms of the planning officer's reasons. First, he submitted that her approach in paragraph 2 to paragraphs A19 and A17 of Annex A to Circular 02/99 was muddled and irrational.

13. Annex A to Circular 02/99 contains what are described as “indicative thresholds and criteria” for the identification of developments requiring EIA. As the opening paragraph indicates, they are indicative only and are designed simply to provide general assistance to local planning authorities. Paragraph A17 relates to industrial estates. It suggests that an EIA is more likely to be required if the site to be developed is of more than 20 hectares and that particular consideration should be given to the potential increase in traffic, emissions and noise. Paragraph A19 is one of two paragraphs relating to urban development projects. It suggests that proposals for the development of sites that have not previously been intensively developed are more likely to require an EIA if the area of the scheme is more than 5 hectares or it would provide a total of more than 10,000m<sup>2</sup> of new commercial floor space, or if the development would have significant urbanising effects in a previously non-urbanised area.
14. Mr. Drabble submitted that it was irrational to treat the size of the scheme and the presence of existing development as determining whether it should be considered under paragraph A17 or A19. I am inclined to agree, and this part of the planning officer’s reasons might be said to betray some slightly muddled thinking. However, I think it is clear that she did in fact consider the proposed development by reference to paragraph A17. It could be said that this development did not fit very neatly into either paragraph, being neither an industrial estate nor an urban development, but of the two only paragraph A17 could provide any useful guidance. This could not by any stretch of the imagination be described as an urban development, nor even as a development that would have significant urbanising effects in a previously non-urbanised area. The fact that in *R (Goodman and Hedges) v London Borough of Lewisham* [2003] EWCA Civ 140 the court regarded the construction of a storage facility in Lewisham as an urban development is beside the point. In that case the proposed development was to take place in an urban setting. Here the proposed development was to take place in a rural setting and its nature was more akin to that of an industrial estate. In my view, therefore, there is no substance in this point.
15. Mr. Drabble’s next submission was that paragraph 5 of the planning officer’s reasons is fatally flawed. He submitted that notwithstanding the guidance given in paragraph 33 of Circular 02/99, the duty of the planning authority when giving a screening opinion is to decide whether the development under consideration is likely to have significant effects on the environment. That requires the relevant officer to consider the particular characteristics of the proposal. Moreover, he submitted that for this purpose the expression “is likely to have” means little more than “may possibly have” and that any effect which a planning authority would wish to take into account when considering whether to grant permission for development is “significant” for these purposes. In the present case, he submitted that the planning officer had failed to deal with what she herself had identified as the main environmental effects of the proposed development, namely, an increase in traffic movements, the effect on the landscape and noise disturbance to nearby residents. Her reference to the fact that transport, landscape and noise assessments were all to be provided with the planning application shows that she was aware of the need to consider those potential effects when considering whether to grant planning permission, but she has

not said enough to show that she had considered them for the purposes of the opinion, nor does she say that she is satisfied, before having received any assessments, that they were not likely to be significant, or why. Accordingly, her reasons are inadequate when tested against the requirements laid down in *Mellor*.

16. Some support for the view that the expression “is likely to have” should be construed as “may possibly have” is to be found in paragraph 51 of the opinion of Advocate General Kokott in *Mellor*. She said:

“If it is obvious that there are no significant effects on the environment, such a screening can be sufficiently documented by a single sentence. If, on the other hand, certain possible environmental effects have already been raised, more extensive statements are needed to show that those effects have been properly considered. The case-law on the obligation to state reasons under primary law offers guidance here. According to that case-law, there must be a sufficient demonstration of the reasons why legal and factual aspects which have already been raised in the procedure do not show that there is a *possibility* of significant effects on the environment.” (Emphasis added.)

17. Mr. McCracken was inclined to accept in the light of that passage and of paragraphs 44-45 of the court’s judgment in *Landelijke Vereniging tot Behoud van de Waddenzee v Staatssecretaris Van Landbouw, Natuurbeheer en Visserij* [2004] E.C.R. I-7405, [2005] 2 C.M.L.R. 31 concerning the Habitats Directive (Directive 92/43/EEC) that “likely” in this context means “possible”, but it is fair to say that there is nothing in the judgment of the court in *Mellor* which directly bears on the point. In my view something more than a bare possibility is probably required, though any serious possibility would suffice.

18. In support of his submission as to the meaning to be given to the word “significant” in this context Mr. Drabble referred us to the checklist in the European Commission’s Guidance on EIA Screening published in 2001, which suggests that a useful simple check as to whether an effect is significant is to ask oneself whether it is one that ought to be considered and to have an influence on the decision whether to grant development consent. However, in *R v St. Edmundsbury Borough Council ex parte Walton* [1999] Env. L.R. 879 Hooper J. (as he then was) expressed the view that the council’s decision not to require an environmental statement under the forerunner of the current regulations, the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988, was not *Wednesbury* unreasonable, even though, if one were prepared, it might consider that the development was likely to have effects that were sufficiently serious to justify a refusal of planning permission. Accordingly, Mr. McCracken Q.C. submitted that there is no inconsistency in the present case between deciding that the development will not have significant environmental effects and calling for detailed assessments of increased traffic movements, landscape effects and noise.

19. For my own part, I do not think that one should attempt to place too rigid an interpretation on the word “significant” in this context, but the main difficulty I have with this part of Mr. Drabble’s argument is that, if his submission are both correct, an EIA would be required in virtually all cases in which a development might possibly have some effect on the environment, which does not seem to me to be what the directive intended. However, for reasons which will become apparent it is not necessary to reach a final decision on either of these questions in the present case. I would therefore prefer not to place a gloss of my own on the words used in the Regulations and leave it to planning authorities to decide on a case by case basis whether the development under consideration is likely to have a significant effect on the environment, as that expression is to be understood in the light of the developing case law of the European Court .
20. Having dealt with those points I can return to the substance of the argument, which is that the planning officer failed to demonstrate that she had considered the likely effect of the development in relation to traffic movements, the landscape and noise or, if she had, to explain why an EIA was not required in this case. When considering a submission of this kind I think it important to bear in mind the nature of what is involved in giving a screening opinion. It is not intended to involve a detailed assessment of factors relevant to the grant of planning permission; that comes later and will ordinarily include an assessment of environmental factors, among others. Nor does it involve a full assessment of any identifiable environmental effects. It involves only a decision, almost inevitably on the basis of less than complete information, whether an EIA needs to be undertaken at all. I think it important, therefore, that the court should not impose too high a burden on planning authorities in relation to what is no more than a procedure intended to identify the relatively small number of cases in which the development is likely to have significant effects on the environment, hence the term “screening opinion”.
21. Having said that, it is clear from *Mellor* that when adopting a screening opinion the planning authority must provide sufficient information to enable anyone interested in the decision to see that proper consideration has been given to the possible environmental effects of the development and to understand the reasons for the decision. Such information may be contained in the screening opinion itself or in separate reasons, if necessary combined with additional material provided on request.
22. Here I think Mr. Drabble was on stronger ground. It is true that the planning officer’s reasons must be read in the context of the letter to which they were a response, but nowhere in them does one find set out a clear statement of her reasons for concluding either that there will be no discernible effects in relation to traffic movements, landscape or noise, or that, if there may be, they will not be sufficiently serious to be regarded as significant. Paragraph 5 does not take one far in that direction because it is little more than a recital of paragraph 33 of Circular 02/99, which the officer appears to treat as encapsulating the criteria that have to be met before an EIA is required.
23. Mr. Lewis reminded us that reasons for a decision of this nature need not be extensive,

provided that they are clear, relying on paragraph 36 of the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter (No.2)* [2004] UKHL 33, [2004] 1 W.L.R. 1953. He submitted that the reasons provided for the decision in this case are sufficiently clear and meet the requirements of both *Porter* and *Mellor* when read in the context of Savills' letter, even though they may not have been expressed as fully as one might wish. He submitted that in paragraph 5 of her reasons the planning officer should be understood as saying that she accepted what Savills had said in their letter and that she was satisfied that, although it was a major development, the enlarged facility would not have more than local importance, was not in a particularly environmentally sensitive or vulnerable location and would not have unusually complex or potentially hazardous environmental effects – i.e. that it did not fall within the criteria set out in paragraph 33 of the Circular.

24. Following the hearing Mr. Lewis helpfully drew our attention to the very recent decision of this court in *R (Wye Valley Action Association Ltd) v Herefordshire Council* [2011] EWCA Civ 20, another case in which the court had to consider the adequacy of a screening opinion. The primary issue in that case was whether the council's decision that the rotation of polytunnels for growing soft fruit was not a Schedule 2 development because it did not constitute "a project for the use of uncultivated land or a semi-natural area". However, the lawfulness of the decision was also challenged on the grounds that the council had failed to provide sufficient reasons for its decision to satisfy the requirements of *Mellor*. In particular, it was said that the council had failed to set out the range of considerations it had taken into account in reaching its conclusion.

25. The council's reasons were expressed in the following way:

"The application involves the rotation of polytunnels for the purposes of growing soft fruit in the ground and on land that is already cultivated (mixture of arable and turf production)."

26. Richards L.J., with whom Rix and Smith L.J.J. agreed, dealt with the question relatively briefly. He held in paragraph 47 of his judgment that the reasons given in the screening opinion were adequate because it was clear enough from what had been said that the decision was based on the fact that the extent of existing cultivation was such as to take the land in question outside the description "uncultivated land or semi-natural areas". That was sufficient to enable the Association to reach an informed decision whether to challenge the opinion for legal error. It was not incumbent on the council to set out all the considerations it had taken into account. It had set out the essence of its reasoning and that was enough.

27. Nothing has been put before us to suggest that the planning officer's decision in this case was not carefully and conscientiously considered, nor do I think it can be said that it was not in fact based on information that was both sufficient and accurate. However, I have, somewhat reluctantly, come to the conclusion that the reasons given for her decision do not make it sufficiently clear why she reached the conclusion that an EIA was not required

in this case. That is not to suggest that she may not have had perfectly good reasons for reaching that conclusion, just that it is not clear what they were. Although the matters referred to in paragraph 3, which refers to the risks of flooding, public rights of way, tree preservation orders, ancient monuments and environmentally sensitive areas, are of importance in themselves, they were not aspects of the environment that were potentially at risk and so did not require detailed consideration. Paragraph 5 contains the whole of her reasoning in relation to the effects that were of potential significance.

28. It is perhaps unfortunate that the planning officer chose to express her decision in the language used in paragraph 33 of Circular 02/99, because the three criteria to which it refers are couched in terms so broad that they offer only general guidance in relation to the kind of projects that are likely to require an EIA. However, the same criticism could have been made had she expressed her reasons in terms of what is described in paragraph 34 as the “basic test”, namely, that she has not made it clear *why* she did not consider the test to be satisfied. One can, I think, infer that the planning officer had considered the three matters to which she referred in paragraph 4 and that she may have accepted Savills’ arguments in relation to them. She may have thought that conditions could be imposed on any grant of planning permission to ensure that the effects would not be significant. The difficulty is that one does not know and cannot safely infer what her reasons were. In my judgment, therefore, the opinion does not comply with the requirements laid down in *Mellor*.
29. This case differs, in my view, from that of *R (Wye Valley Action Association Ltd) v Herefordshire Council* in an important respect. In that case it was reasonably clear from the way in which the opinion was expressed that the council had formed the view that the project was not an EIA development because the land in question was already under cultivation and was therefore not uncultivated or semi-natural. Having done so, it was unnecessary for it to identify or discuss the range of considerations taken into account in reaching that decision. In the present case, on the other hand, the planning officer failed to identify the correct test and failed to explain in any relevant way why she concluded that the development was not likely to have significant effects on the environment.
30. A question then arises as to the appropriate form of relief in this case. There is evidence before us in the shape of a statement from Mr. Philip Darke, the managing director of Camgrain, which explains the importance of this facility to farmers in East Anglia and the need for construction to begin soon if it is to be open in time for this year’s harvest. No doubt it was these reasons that at the close of the hearing Mr. McCracken submitted that if we were to hold that the screening opinion was flawed we should not quash the grant of planning permission but should simply direct that a fresh screening opinion be adopted.
31. I have some sympathy with his client’s position, but I do not think that course is properly open to us. The difficulty, as it seems to me, is that the adoption of a screening opinion, if one is required, is part of a process that leads eventually to the grant or refusal of planning permission. If any step in that process is legally flawed, the process as a whole is flawed and the grant of permission must be quashed. Accordingly, I think that there is no

alternative but to grant the claimants the relief they seek.

**Lord Justice Jackson:**

32. I agree that this claim for judicial review succeeds for the reasons given by Moore-Bick LJ.

**Lord Justice Mummery:**

33. It is unnecessary to repeat the history of the proceedings or the account of the facts by Moore-Bick LJ, who also refers to the material parts of the Regulations, the Council Directive and the Circular and cites the key passage from the judgment of the Court of Justice in *Mellor*.

34. With considerable hesitation I differ from the conclusion “somewhat reluctantly” reached by my Lord, with whom Jackson LJ agrees.

35. My Lords rightly reject some of Mr Drabble’s criticisms of the negative screening opinion. I part company with them on the issue of insufficiency of reasoning. They accept Mr Drabble’s submissions that the reasons given on 17 April 2009 did not make it sufficiently clear why it was considered that the proposal is not an EIA development; that the screening opinion did not comply with the requirements laid down in *Mellor*; and that, in consequence of that legal flaw in the screening opinion, the subsequent grant of planning permission must be quashed.

36. This case is close to the line. On balance, I find the submissions by Mr Robert McCracken QC for Camgrain Storage and Mr Meyric Lewis for the Council more persuasive than Mr Drabble’s. The Council’s Senior Planning Officer placed on the Planning Register a screening opinion containing a concise express statement of the basis of the decision that the proposed development was not considered to be an EIA development. The screening opinion of 17 April 2009 was itself responding to a request in a detailed letter sent by Savills to the Council on 27 March 2009 inviting the Council to consider that an EIA was not required. Savills supplied information and set out detailed representations in support of their request. The Council’s decision not to have an EIA must be read in the context of the request for it. In substance the Council took the same approach as Savills. The reasons that appear in the screening opinion, read with the information and representations in the letter requesting the opinion, are clear enough (a) to indicate to the claimants, as nearby residents, the basis of the decision with which they disagree and (b) to enable them to take steps to protect their rights under EU law; for example, on a challenge, by way of judicial review, to the legality of the decision not to have an EIA.

37. The Council reached its decision on a consideration of the likely cumulative impact of a major development on the environment – increase in traffic movements, landscape impact and

noise disturbance to nearby residents – and stated that assessments on those matters were to be provided with the application. The factors identified in paragraph 5 of the opinion indicated the basis of the decision by reference to the relevant criteria and concluded that the major development will not have more than local importance, will not be proposed for a particularly environmentally sensitive or vulnerable location and will not have unusually complex and potentially hazardous environmental effects.

38. The Senior Planning Officer might have written a longer decision letter or given more elaborately reasoned conclusions. I agree with Mr McCracken that long decisions and elaborate reasoning are neither necessities nor virtues in themselves and that in this case, although concisely stated, the reasons given are adequate. While I would not discourage more extensive explanations for negative decisions where they are thought appropriate, I agree with my Lord's observation (paragraph 20) that a screening opinion is not intended to be a detailed or full assessment of factors that are relevant to the substantive grant or refusal of planning permission. In *R(Wye Valley Action Association Limited) v Herefordshire CC* [2011] EWCA Civ 20 this court rejected the submission that the brief reasons given by the local planning authority for not having an EIA were inadequate, as they did not set out the range of considerations taken into account in reaching its decision in its screening opinion. As Richards LJ said, when commenting on the appropriate standard of reasoning in a screening opinion, at paragraph [47]:-

“...it was not incumbent on the council to set out all the considerations it had taken into account. ..It set out the essence of its reasoning and that was enough.”

39. Mr Drabble says that, instead of “grappling with” the specific issues and materials relating to effects on traffic safety, noise and landscape and instead of setting out a “reasoned conclusion” on those matters, the Council gave a screening opinion that was no more than a recitation of the general criteria, as well as being illogical and irrational. That, he says, was not the proper approach to a decision declining an EIA.

40. In my judgment, the decision not to have an EIA is a significantly different kind of decision from a refusal or grant of planning permission. The reasons for a preliminary administrative decision whether or not to have an EIA do not have to satisfy the same standards of information and reasoning as would apply to a substantive decision on a planning application. The degree of “grappling” is different, more provisional and less exacting. What matters with a decision of this character is that the reasons for it that were made available to the claimants suffice to satisfy the criteria in the passage cited from *Mellor*. In my view, they do. The submission by Savills that no EIA was required set out their position the size of the development and its impact and stated that the likely impact in landscape and transport terms would be addressed through the necessary landscape and transport assessments when the planning application was submitted. The Council accepted that approach. The overall position was that enough reasons were available to the claimants for them to know the basis of the decision not to have an EIA and to mount a challenge to

it.

41. In those circumstances the screening opinion was not, in my judgment, contrary to law for want of reasons or reasoning. I would dismiss the claimants' application for judicial review.