

Notice of intended proceedings on application 26/02109/FUL, in the form of Annex A to the Pre-Action Protocol for Judicial Review

Sent: Tuesday 29 September 2026.

Summary. Christ's Lane Action Group ("CLAG") gives notice of intended proceedings for judicial review of any grant of planning permission by Cambridge City Council ("the Council") on application 26/02109/FUL before the High Court has given judgment on the four grounds on which the Council has agreed that its 2025 permission for the same scheme should be quashed. It asks the Council to confirm by 5 pm on Wednesday 30 September 2026 that determination is deferred until judgment, or that no decision notice will issue before judgment. It asks for the reply to the rest of this letter by 5 pm on Friday 2 October 2026.

Register: application 26/02109/FUL. Documents are cited by their numbers on that register unless another register is named, and quotations are verbatim from the document cited. CLAG asks that the Council places this letter on the register when received, and its reply with it.

Dear Vanessa Blane, Dear Dominic Bush, Dear Stephen Kelly,

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applies on the College's own words, and section 38(6) requires the decision to accord with the plan

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1. Proposed claim for judicial review

1.1 To: the Council, by Vanessa Blane (Senior Planning Lawyer, 3C Shared Services), Vanessa.Blane@3csharedservices.org; copy Stephen Kelly (Joint Director of Planning and Economic Development, Greater Cambridge Shared Planning), Stephen.Kelly@greatercambridgeplanning.org; copy Dominic Bush (case officer), Dominic.Bush@greatercambridgeplanning.org; copy PlanningComments@greatercambridgeplanning.org, for the register of application 26/02109/FUL.

1.2 The proposed claim is for judicial review of any grant of planning permission on application 26/02109/FUL before the High Court ("the Court") has given judgment in R (Christ's Lane Action Group) v Cambridge City Council, Christ's College Cambridge interested party, AC-2025-LON-004656 ("the judicial review"). This letter is a notice of intended proceedings in the form of Annex A to the Pre-Action Protocol for Judicial Review ("the Protocol"), sent before the case officer's report to the Council's Planning Committee ("the Committee") on this application ("the report") is written. The letter before claim under paragraphs 14 to 19 of the Protocol will follow any grant.

2. The claimant's details

2.1 Christ's Lane Action Group, an unincorporated association of residents of Christ's Lane and its neighbourhood, c/o Christ's Lane, Cambridge CB1 1NP, residents@christs-lane.com. CLAG is the Claimant in the judicial review and a litigant in person; no legal adviser deals with this claim.

3. The defendant's reference details

3.1 The Council's references are:

- (a) application 26/02109/FUL, received 5 June 2026, validated 10 June 2026;
- (b) the correspondence of 21 June, 2 July, 28 July, 20 August and 26 August 2026 (documents 9495878 and 9501516), the extension request of 25 August 2026 (document 9503875), and the Council's conservation officer's comments of 26 August 2026 (document 9505685; "the conservation officer's comments");
- (c) in the judicial review, the order of Kimblin J signed on 6 March 2026 and served on 9 March 2026 (document 9462886), and the Council's letter to the Court of 28 April 2026 (within document 9462822);
- (d) the Council's statement of matters relied upon, sent to the Court on 8 June 2026 ("the statement of matters"), the hearing listed for Tuesday 20 October 2026, CLAG's application notice of 29 September 2026, served today, and the order of Sir Peter Lane of 29 September 2026 ("the order of 29 September 2026").

4. The details of the matter being challenged

4.1 The Council's determination of application 26/02109/FUL (Christ's College Library, Christ's College, St Andrew's Street, Cambridge) before the Court has given judgment in the judicial review, whose hearing the order of 29 September 2026 keeps listed for Tuesday 20 October 2026. On 28 September 2026 the Council's Democratic Services wrote to CLAG that the application "will be considered by the Cambridge City Council Planning Committee on 7th October 2026", with reports available five working days before, that is by Wednesday 30 September 2026. On 28 July 2026 the case officer wrote to CLAG that the application was targeted for committee "whether or not the High Court has issued a decision" (document 9495878), and on 26 August 2026 the Council wrote to CLAG that the application would be considered on its own merits (section 6.3, item 9).

4.2 We do not oppose a new library. CLAG does not ask the Council to refuse to determine the application. It asks that the application is determined after the Court has given judgment on the four grounds on which the Council has agreed that its 2025 permission for the same scheme should be quashed, with the judgment before the members who decide.

5. The details of any Interested Parties

5.1 The applicant, The Master, Fellows and Scholars of Christ's College, Cambridge ("the College"), would be an Interested Party to any claim. This letter concerns a decision not yet taken, so it is sent to the Council only and placed on the public register. The letter before claim that follows any grant will be sent to the College's solicitors under paragraph 17 of the Protocol.

6. The issue

The Council has told the Court that its decision of 7 November 2025 on these drawings should be quashed on four grounds, the applicant has changed nothing, and the Council intends to decide again before the judgment. The grounds on which CLAG would challenge a grant made before the judgment are these.

6.1 A decision before the High Court’s judgment would leave out a material consideration: the judgment on the four grounds the Council has accepted is one under section 70(2), the Court has fixed 20 October 2026 to give it, and the duty of inquiry (Dover) requires it to be obtained first; this letter gives notice of the claim against any grant made without it

6.1.1 By order of 29 September 2026 the Court kept the hearing of Tuesday 20 October 2026 listed and stated that the parties “can expect the Court on that day to consider first whether, in the circumstances, it is appropriate to proceed as the Claimant contends”, that is, to a reasoned judgment on the four grounds. The order recites the draft consent order and statement of matters “signed by the Defendant and the Interested Party, whereby the impugned decision is to be quashed, by reference to the four grounds of challenge”. A decision on 7 October 2026 is therefore taken thirteen days before the Court’s own first step in a claim to which the Council is a party, on the drawings and the grounds its signed agreement covers, and cannot have regard to the judgment.

6.1.2 Section 70(2) of the Town and Country Planning Act 1990 (“the 1990 Act”) requires the Council to have regard to material considerations, and a reasoned judgment on the four grounds, on the same drawings, is one. The duty of inquiry “includes the need to allow the time reasonably necessary, not only to obtain the relevant information, but also to understand and take it properly into account” (Dover DC v CPRE Kent [2017] UKSC 79 at [62]). The Council’s own guidance to members states: “If you feel you have had insufficient time to digest new information or that you need further information, you should say so and, if necessary, ask for a deferral or abstain.” (Members Planning Good Practice Guidance 2025, paragraph 11.5). The hearing is three weeks away.

6.1.3 If members resolve to grant before judgment and judgment is given before a decision notice issues, the judgment is a new material consideration. The officer “can only safely proceed to issue the decision notice if he is satisfied (a) that the authority is aware of the new factor, (b) that it has considered it with the application in mind, and (c) that on a reconsideration the authority would reach (not might reach) the same decision” (R (Kides) v South Cambridgeshire DC [2002] EWCA Civ 1370 at [126], as quoted in Hayle Town Council v Cornwall Council [2023] EWHC 389 (Admin) at [41]). No officer could be so satisfied of a reasoned judgment on the four grounds without referring the application back to members.

6.2 Displaying Historic England’s reply while keeping CLAG’s letter and seventeen documents off the register would break the SCI’s promise at paragraph 4.19 that representations are made publicly available online, a promise the Court of Appeal has held a council to (Majed)

6.2.1 On Friday 25 September 2026 CLAG sent seventeen documents to PlanningComments@greatercambridgeplanning.org in five emails between 2.13 pm and 3.28 pm, and sent the three specialist officers’ documents to those officers directly. They are:

- (a) the case officer letter with Annexes C, F, G and H;
- (b) the conservation officer, environmental health officer and sustainability documents;
- (c) the design and development plan paper, and the alternatives, justification and public benefits paper;
- (d) CLAG’s transcript extract of the Development Control Forum of 29 July 2026 (“the DCF”), cited below by entry number as “the DCF record”;
- (e) six letters, on avoidance and justification, document accuracy, determination timing, register

integrity, committee papers and the minutes, each with its exhibits.

At 12.20 pm today the register displayed two documents published on 28 September 2026, “HISTORIC ENGLAND RESPONSE TO CLAG” and “AGENT/APPLICANT PUBLIC SPEAKING LETTER”, and none of the seventeen. Historic England’s reply was sent at 3.52 pm on Monday 28 September 2026, copied to PlanningComments@greatercambridgeplanning.org and planning@greatercambridgeplanning.org, and was displayed the same day. CLAG’s letter that it answers was sent at 3.00 pm on Friday 25 September 2026, copied to the same two addresses, and is not displayed.

6.2.2 Paragraph 4.19 of the Council’s Statement of Community Involvement adopted in March 2024 (“the SCI”) states that representations “will be added to the application file and made publicly available online alongside the planning application documents”. The Council’s notice of 19 August 2026 states that views are “published onto the website promptly” (document 9499001), and the applicant’s letters of 5 and 27 August 2026 were displayed the next day (documents 9486713 and 9506331). A Statement of Community Involvement is “a paradigm example” of a promise the Court of Appeal has held a council to (R (Majed) v Camden LBC [2009] EWCA Civ 1029 at [14]). CLAG asks that each of the seventeen documents is displayed today, listed as a background paper under section 100D of the Local Government Act 1972 (“the 1972 Act”), and taken into account in the report.

6.3 The record engages the consistency principle (Davison): the Council agreed in court that its 2025 decision should be quashed on four grounds, the College changed nothing, and the Council’s own officers and consultees find harm

1. On 7 November 2025 the Council granted permission 25/02161/FUL for the demolition of the College library in Bath Court and the building of a new library. CLAG issued the judicial review on 18 December 2025 on four grounds. The Claimant’s statement of facts and grounds, on the register within CLAG’s objection of 10 July 2026 as Document 2 of document 9475597 (“the Statement of Facts and Grounds”), heads them: “Ground 1 – The Committee was materially misled as to Historic England’s advice.”; “Ground 2 – The Committee was materially misled as to the existence and/or extent of harm to the significance of designated heritage assets”; “Ground 3 – The Committee took into account an irrelevant consideration – optimum viable use.”; “Ground 4 – The Committee failed to take into account a relevant consideration – the existence of less harmful alternative modes of development.” (paragraphs 51, 59, 72 and 78).
2. By order signed on 6 March 2026 the Court granted permission on all four grounds as “strongly arguable” and, refusing expedition, wrote: “the College chose to enter contracts before the permission was legally secure. That was a risk which it chose to take.” (document 9462886, page 3).
3. On 28 April 2026 the Council wrote to the Court: “The Defendant and Interested Party have agreed to a Consent Order quashing the Council’s decision on all four grounds, with a supporting Statement.” and “The position is not materially different from if the Defendant and Interested Party had conceded the claim on all grounds in its Acknowledgement of Service.” (paragraphs 6 and 12, within document 9462822). The statement of matters states at paragraph 12: “Having reviewed its position following the grant of permission, the Defendant accepts that the Decision Notice should be quashed on the basis of the Grounds above.” CLAG did not sign the draft order, so that the four

grounds receive a reasoned judgment. By order of 29 September 2026 the Court kept the hearing of Tuesday 20 October 2026 listed, and the parties can expect it to consider first on that day whether to proceed to that judgment (section 6.1).

4. On 5 June 2026 the applicant submitted application 26/02109/FUL for the same development. Its Covering Statement (document 9423967) states at paragraph 1.7: “It should be noted that no changes have been made to the detail of the drawings nor consequently to the reports submitted in support of that application.”; and at paragraph 2.2 that the points raised in the judicial review “are capable of being addressed in the Planning Officer’s report”.
5. On 21 June 2026 CLAG asked the Council to confirm “That the officer’s report will address, specifically and individually, each of the four conceded judicial review grounds and explain how the Second Application corrects each”. The Council replied on 2 July 2026: “The officer report is currently being prepared and the Council is not obliged to respond to the above request.”
6. On 8 July 2026 Historic England, the statutory consultee on the Grade I listed building (“the statutory consultee”), wrote to the case officer, enclosing its letter of 29 July 2025 (documents 9457100 and 9457102): “The proposals subject of the present application remain unchanged from those previously assessed. Consequently, we are comfortable to reiterate our position of no objection and do not wish to make any further comments. We defer you to our previous letters of advice for a detailed assessment of the proposals, which are enclosed to this email, for ease.” The letter of 29 July 2025 finds that the proposals “would result in certain levels of harm to the significance of the listed building, primarily as a result of the excessive bulk of the new building, which we consider would detract from the setting of the surrounding buildings”, that “the building is too big for its location”, and that Historic England “would strongly encourage that massing is further reduced so it sits better within this context”. Historic England’s own casework record classes both letters of 2025 “Y - Concerns” (cited as held on Historic England’s file, released under reference 26/04173; CLAG’s Historic England FOI schedule, Annex H, filed on 25 September 2026, section 1). On 25 September 2026 CLAG asked Historic England to state, for each asset, the category of the effect under policy HE5(2) of the National Planning Policy Framework of 17 August 2026 (“the NPPF”) and the degree of any harm. It asked whether the harm arises from the building’s volume, mass and bulk as a whole or from one element. Its Inspector of Historic Buildings and Areas for the East of England replied on 28 September 2026: “Our comments on this application were issued on 8 July 2026, where we reiterated the advice provided on applications 25/02161/FUL & 25/02162/LBC, that is, that we do not object to these applications.”; and: “Following the publication of the updated version of the National Planning Policy Framework on 17 August 2026, we are comfortable that the advice given remains relevant and appropriate and consider that our existing responses provide a sufficient basis for the Local Planning Authority to assess the proposals in the context of the revised NPPF.” (the register entry published on 28 September 2026 headed “HISTORIC ENGLAND RESPONSE TO CLAG”; its letter of 27 August 2026, document 9508056, is in the same terms). The reply names no category and no degree, and the advice it reiterates is the letter that finds harm from “the excessive bulk of the new building”.
7. On 16 July 2026 the Leader and Cabinet Member for Planning and Transport replied to public question 7 at Full Council, in the minuted words: “The Council’s in-house and

external Legal Advisers carefully considered the outcomes of planning appeals and judicial proceedings and discussed these with Officers, Leadership team of the service and Councillors to identify areas that required change of policy or approach and that would be the case here.” (the Council’s published minutes of its meeting of Thursday 16 July 2026, public question 7).

8. On 28 July 2026 the case officer wrote to CLAG that officers were “minded to include explanatory text within the report for members” on the judicial review, and were “minded to impose afresh all planning conditions” (document 9495878).
9. On 26 August 2026 the conservation officer’s comments were placed on the register. They find: “The harm to heritage assets is considered to primarily relate to the setting of the Bodley Library, which forms part of the grade I listed asset ‘buildings surrounding Entrance (First) Court with the south-east range of Second Court’. The harm arises from the relative scale and proximity of the stair tower.” They find that this part of the scheme “remains harmful to the listed building’s setting”, and that “On balance, the harm is considered to be at the lower end of the scale, and therefore NPPF policy HE6 (4) is engaged” (pages 3 and 4). The same day the Council wrote to CLAG that the application “will be considered on its own merits”.

6.4 A decision of the same scheme “on its own merits” would breach the consistency principle (Davison), which requires the report to state, for each of the four grounds the Council accepted in court, what it now does

6.4.1 The Council has told the Court that its decision of 7 November 2025 on these drawings should be quashed on the four grounds at section 6.3, items 1 and 3, and the applicant has changed nothing. The report is therefore written on the documents on which the Council has accepted that its members were materially misled twice, took an irrelevant consideration into account and left a relevant one out. “The principle of consistency is not limited to the formal decision but extends to the reasoning underlying the decision” (R (Davison) v Elmbridge BC [2019] EWHC 1409 (Admin) at [56(i)]).

1. “On its own merits” is not an answer. The officer’s report to the Committee of 29 October 2025 on application 25/02161/FUL, cited by paragraph and by the page of the public reports pack of that date (“the 2025 report”), answered the objection “Lack of assessment of alternative locations.” with: “The application must be assessed on its own merits including the library in the currently proposed location.” (Table 3, page 170). The Council’s letter of 26 August 2026 says the same of this application (section 6.3, item 9). The Court of Appeal has called that formula “the mantra” and held that an alternative’s absence from the application “was not a sound reason” for leaving it out of account (R (Langley Park School for Girls Governing Body) v Bromley LBC [2009] EWCA Civ 734 at [43] and [48]).
2. The parts of the 2025 report that count against the scheme, and that the Council’s agreement does not touch, must be carried or their departure explained: “The decision maker may need to analyse the basis on which the previous decision was quashed and take into account the parts of the decision unaffected by the quashing” (Davison at [56(iv)]); “The applications were identical in all material respects and related to the same site.” (Davison at [67]). They are the findings that the building “could be seen to break the immediate skyline” (paragraph 11.20, page 142; section 6.6, item 2) and “would

undoubtedly somewhat enclose part of Christ's Lane" (paragraph 20.25, page 165). They are also the 10.3 metres at the lane (paragraph 12.5, page 144; section 6.6, item 3), and the consented design treated as "an alternative scheme" and "a material consideration for members" (paragraph 4.1, page 126).

3. The first accepted ground is repeated by a label. The 2025 report's consultee table gave members "Historic England - No Objection" (paragraphs 6.19 to 6.21, page 131) above a letter that finds harm from "the excessive bulk of the new building" (section 6.3, item 6): "the committee were given the false impression that he did not disagree with it" (R (Guardians of Whitewebbs Park CIC) v Enfield LBC [2026] EWHC 1916 (Admin) at [107]). Historic England's reply of 28 September 2026 describes its advice as "that we do not object to these applications" and refers the Council to the letter that finds the harm. The report must quote that letter, state the "Y - Concerns" classification, and give each consultee's finding on harm and scale in the consultee's words. The conservation officer's comments locate the harm in the stair tower and do not mention the statutory consultee's letter, which locates it in the bulk of the whole building. Preferring the officer requires "cogent and compelling reasons" that engage with that letter (Shadwell Estates Ltd v Breckland DC [2013] EWHC 12 (Admin) at [72]).
4. The Council's own method, stated to its chamber on 16 July 2026, is to identify with officers and councillors the areas that require a change of approach after judicial proceedings, "and that would be the case here" (section 6.3, item 7). A report that names no such area on any ground is written outside that method.
5. On 14 September 2026 the Planning Court said of a report that carried judgments an inspector had rejected: "It benefits no one for officers to give advice or convey judgments, particularly as to material considerations, that they know to have been rejected by a planning inspector. Councillors risk making flawed decisions in ignorance of material information." (R (Old Chiswick Protection Society) v Hounslow LBC [2026] EWHC 2278 (Admin) at [100]). Here the Council itself has accepted before the Court that the judgments were wrong.

6.4.2 The report must state, for each of the four grounds, in the words of the statement of matters, what the Council accepted, what the 2026 advice is on the same question, and, where they differ, why. That statement can be written only after the steps in sections 6.5 to 6.7. A report that leaves it out, or replaces it with "its own merits", leaves the Council's own previous decision and its own agreement out of account (Davison at [67] and [68]). A duplicate permission granted on a report that "still did not inform the Planning Committee of the true extent of the harm" was quashed (R (Midcounties Co-operative Ltd) v Forest of Dean DC [2015] EWHC 1251 (Admin) at [100] and [101]).

6.5 A finding that the harm is unavoidable and justified would be made without the evidence HE4(1)(b) and HE4(2) require: the Council's own 2016 report found that a lower library met the College's needs, and the College has supplied none

6.5.1 HE4(1)(b) of the NPPF requires proposals to "Avoid (or if that is not possible, minimise) harm to the significance of heritage assets". HE4(2) requires that any harm to a designated asset "should have a clear and convincing justification in accordance with the policies in this chapter", and Policy 61(e) of the Cambridge Local Plan 2018 ("the Local Plan") requires "clear justification ... through detailed analysis of the asset and the proposal". DP3(3) of the NPPF provides:

“Development proposals should be refused if, without clear justification, they conflict with paragraph 1 of this policy or relevant aspects of the principles in paragraph 2, or with any explicit design standards set out in the development plan (including those in locally-specific policies, guides, codes or masterplans).” The Council has accepted that “the possibility of that harm being reduced or avoided through an alternative scheme or a realistic mode of development was a material consideration” (the statement of matters, paragraph 11).

1. The officer’s report to the Committee of 31 August 2016 on application 16/0405/FUL, document 2008719 on that application’s register (“the 2016 report”), found: “The proposed new library would meet the needs of Christ’s College”. The 2025 report called that design “an alternative scheme” and “a material consideration for members” (paragraph 4.1, page 126). No document on the register states why it no longer meets the need.
2. The applicant’s own documents put the consented basement’s volume above the lane: “This accommodation located in the basement in the 2011 proposal has been distributed throughout the new library on the upper floors.” (the Design and Access Statement, part 1, document 9423960, section 3.2, page 9); “The extent of the volume at this height is extended for a further part along Christs Lane to accommodate some of the area that was otherwise housed in a basement of the 2016 scheme.” (the architects’ response to the Victorian Society, document 9458386, page 1).
3. The statutory consultee gives the same cause: “In order to meet the requirements of the brief and compensate for the loss of the basement, the building needs to extend further above ground.” (document 9457102, page 2).
4. The Master of the College, the applicant’s presenter at the DCF (“the Master”), told the DCF: “the chimneys need to be a certain height in order to achieve that ventilating effect. That height can begin beneath the ground. But as I’ve said many times, we do not want to dig into the ground.” (the DCF record, entry 4.13). The reason is preference.
5. The Council’s own advice of 19 December 2024 states: “The proposal is higher and larger in scale than the consented schemes, and the proposed scale and massing of this raises concern. The proposed building would not appear smaller in section than the consented scheme.”; and: “The Urban Design Officer recommends repositioning the stairs back towards Bath Court so it is away from Bodley Library.” (printed in the applicant’s Planning Statement, document 9423963, Appendix 3, page 55). The stair tower is where the conservation officer’s comments locate the harm; the Council’s own officer proposed a less harmful position for it before the application was made, and the comments do not carry that advice.
6. The archaeological reason is contradicted by the Council’s own file. The 2025 report gave “the archaeological potential of the site and the sustainability issues arising from extensions to the basement” as the reasons why “increasing the size of the building above ground is preferable (as currently proposed)” (paragraph 9.1, page 138). The 2016 report assessed the consented basement beside the same listed ranges and secured the archaeology and the foundations by condition (paragraphs 6.12 and 8.58; condition 11). The county archaeologist’s advice on this application is a condition in the same form (documents 9441278, 9505261 and 9505262).
7. The carbon reason has no comparison behind it. The Sustainability Statement models “the new library extent only” (document 9423735, page 11), no embodied carbon figure for the consented design is on the register, and the scheme is built on “a piled raft foundation”

(document 9423962, paragraph 10.3). The Master's words at the DCF that a basement "would be about the least green thing we could do" (the DCF record, entry 4.10) are a statement, not a comparison.

8. No costed basement option and no viability evidence is on the register. A finding that avoidance is "not possible", made on the applicant's preference and on no figure, reads "possible" as "preferred"; an authority "cannot have regard to the provisions of the plan if it fails to understand them" (*Tesco Stores Ltd v Dundee CC* [2012] UKSC 13 at [17]).
9. The 2025 file took two positions on the consented design on the same day. The planning report treated it as a material consideration and as the comparator on which the scheme was "a significant improvement" for omitting the atrium and the basement extension (section 9, page 137). The report on listed building application 25/02162/LBC said the permissions "carry no weight in the planning assessment" (paragraph 9.1, page 226). If the consented design is a material consideration the report must assess whether it avoids the harm; if it carries no weight the report repeats the fourth accepted ground.
10. Lower or distributed designs stand on the record, and the applicant has assessed none against the harm (CLAG's alternatives, justification and public benefits paper filed on 25 September 2026, section 4.5):
 - (a) the consented design;
 - (b) the building the Victorian Society specified in writing on 22 August 2025, "reducing the height by approximately half at each floor" (document 7355397 on the register of 25/02162/LBC). The Society wrote on 6 July 2026 "Advice ignored." (document 9455369), and the applicant's agent recorded it on 9 July 2026 as "a suggestion of reducing the building by half a storey" without saying it cannot be done (document 9458387);
 - (c) a library on this site as one of the five study and library places of the College's own adopted masterplan of October 2023.
11. The seriousness of the harm sets the duty: "if a local planning authority considered that a proposed development would do really serious harm it would be entitled to refuse planning permission if it had not been persuaded by the applicant that there was no possibility, whether by adopting an alternative scheme, or otherwise, of avoiding or reducing that harm" (*Langley Park* at [52]). The report must address the alternative "squarely" and reach "a distinct conclusion about it" (*R (Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895 (Admin) at [91]). The absence of a less harmful scheme "cannot serve to reduce the level of harm which would actually be caused by the development itself" (*East Quayside 12 LLP v Newcastle upon Tyne CC* [2023] EWCA Civ 359 at [44]).
12. The justification offered is of a library, not of this building's volume, mass and bulk. HE6(4) weighs the harm "against any public benefits resulting from the proposal", and a new library results from any of the consented designs. The Inspector who dismissed the appeal at 21 Hobson Street, in the same conservation area, wrote: "few if any of these benefits are dependent upon the specific scheme before me, including the precise arrangement of the upper floor and roof of the building, which limits the weight I can attribute to them.", and found no "clear and convincing justification" despite benefits of

“moderate to significant weight” (appeal decision APP/Q0505/W/25/3365274, 21 November 2025, paragraphs 67 to 69).

13. The applicant's own Planning Statement rates the library benefit: the court enhancement “is largely for the College Fellowship and visitors” (paragraph 8.14); the new library and its facilities “will similarly largely only benefit the Fellowship and guests” and are “a benefit of some weight” (paragraph 8.16); “staff and student numbers will remain as per existing” (paragraph 7.99) (document 9423963). The agent's letter of 1 August 2026 describes instead a library that “will serve the 700+ students of the library. Not just for one year but for potentially two centuries.” (document 9481026). Planning Practice Guidance requires that public benefits “should be of a nature or scale to be of benefit to the public at large and not just be a private benefit” (Conserving and enhancing the historic environment, paragraph 020, Reference ID 18a-020-20190723).
14. Two of the benefits weighed in 2025 cannot be weighed now. The Council has accepted that “the listed buildings were already in their optimum viable use and no alternative use had been proposed” (the statement of matters, paragraph 10), and the fourth positive effect in the conservation officer's comments, “Sustaining the ongoing use and conservation of the grade I listed building by providing improved, accessible library facilities.”, is the same consideration in other words. The public access offer of 5 August 2026 (document 9486713) is a letter to the case officer secured by no condition or obligation. Of the existing public opening, exhibitions and archive access the applicant's agent wrote on 26 September 2025: “We accept that these benefits already exist and do not, strictly speaking, stand to be weighed in the planning judgement on these proposals.” (document 7378931 on the register of 25/02161/FUL, paragraph 62).
15. The sustainability weight claimed rests on no assessment against the Council's own standard. The applicant asks for “substantial weight” under CC2(2) of the NPPF (document 9506331). The Council's validation checklist requires for “All new non-residential development” “A BREEAM Pre-Assessment demonstrating that the proposals will meet the requirement for achievement of BREEAM ‘excellent’”, and the Greater Cambridge Sustainable Design and Construction SPD (January 2020, paragraph 3.2.8) states that “Compliance with the policy should be demonstrated by submission of a BREEAM pre-assessment, completed by an accredited BREEAM Assessor”. The register holds neither.

6.5.2 The report must state, on evidence, whether the harm could be avoided by the consented design or another lower or distributed design on the record, and reach a distinct conclusion before any justification or balance. It must then state what the building's volume, mass and bulk is needed for, and where that evidence is. The evidence is the applicant's to supply, and each item is a new submission under paragraph 7.6:

- (a) an embodied carbon comparison with the consented design;
- (b) a costed basement option;
- (c) a statement of why the 2016 design no longer meets the need;
- (d) the reasons the stair position the Council's own officer recommended was not adopted.

6.5.3 If that evidence shows that a lower or distributed design meets the need, HE4(1)(b) is not met, the justification HE4(2) and Policy 61(e) require is absent, and DP3(3) directs refusal. If the report finds the harm unavoidable and justified on the file as it stands, it finds a fact on no evidence and against the Council's own 2016 finding. It adopts an archaeological reason the Council's own file contradicts, a mistake of established fact (*E v Secretary of State for the Home*

Department [2004] EWCA Civ 49 at [66]). It misleads members on the matter that decides the balance (R (Mansell) v Tonbridge and Malling BC [2017] EWCA Civ 1314 at [42]).

6.6 Leaving Policy 60, the tall buildings policy, unapplied would repeat the 2025 report's error: it set the policy aside on a 19 metre figure the policy does not contain, the policy applies on the College's own words, and section 38(6) requires the decision to accord with the plan

6.6.1 Policy 60 of the Local Plan applies to "Any proposal for a structure that breaks the existing skyline and/or is significantly taller than the surrounding built form", which "will be considered against the following criteria"; each criterion begins "applicants should demonstrate" or "applicants should show". Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the determination to be made in accordance with the plan unless material considerations indicate otherwise.

1. The applicant's Heritage Statement states: "The replacement of the existing 1974 library with a taller building on the site, will extend the building upwards and reduce the visible skyline in the view from the southern side of St Andrew's Street." (document 9423964, paragraph 5.20). A building that reduces the visible skyline breaks it in the policy's words.
2. The 2025 report found the same, "the built form could be seen to break the immediate skyline above the existing built form of the existing College" (paragraph 11.20, page 142), then found the policy not engaged because the building "does not, at its highest point, measure 19 metres in height above ground level" and "would not trigger the thresholds as stated under Policy 60" (paragraphs 11.19 and 11.21). The policy contains no figure in metres and no threshold. The 19 metres is Appendix F's example for six storeys "assuming a flat roof with no rooftop plant and a height of 19m above ground level", and the same paragraph states that in the historic core "buildings of four to six storeys may also need to be evaluated against the assessment criteria herein, due to proximity to heritage assets and potential impacts on key views" (Appendix F, paragraph F.10(i), page 330). The 2025 report found "the building is four storeys in height and within close proximity to heritage assets" (paragraph 11.19).
3. The comparison is wrong on the Council's own figures. The 2025 report compared the building with the redevelopment opposite at "approximately 15.5 metres" and found the policy not engaged "because of the location and comparative heights of buildings in the immediate context" (paragraphs 11.19 and 11.20). Three pages later it records: "approximately 10.3 metres in height of the building directly abuts Christ's Lane, with the first floor overhanging the ground floor. The upper floors are set back such that they are not visible above the initial 10.3 metres above ground." (paragraph 12.5, page 144). It puts the building applied for at "approximately 12.5 metres" to the parapet and "approximately 14.1 metres above ground level along Christ's Lane" to the chimneys (paragraphs 11.19 and 12.5), and the existing library at "approximately 5.7 metres" (paragraph 12.3, page 143).
4. The Council's landscape officer wrote on 16 September 2025: "I am confident we were correct in our advice on this application that verified views were not needed – as it the building does not meet the policy 60 triggers." (sic) (the Council's response to CLAG under reference FOI00020035, pages 182 and 183; Exhibit S24_1 to CLAG's design and development plan paper filed on 25 September 2026). The policy contains no triggers.

5. The Council read the same words the other way eleven months earlier. At 21 Hobson Street, in the same conservation area, the Committee refused permission on 6 November 2024 for conflict with “Policy 60(a) and (c)” (the Council’s Planning Committee minutes of 6 November 2024, reason 1). The Inspector who dismissed the appeal found that “the proposal would appear significantly taller than the building it replaced, and those immediately adjacent, in views from the Master’s Garden within Christ’s College” (appeal decision APP/Q0505/W/25/3365274, paragraph 41). Here the building replaced is 5.7 metres and the buildings adjacent are the Grade I Bodley Library and First Court.
6. The expert heritage appraisal by Alec Forshaw IHBC MRTPI, filed with CLAG’s objection of 10 July 2026, document 9458570 (“the expert heritage appraisal”), applies the policy: “The proposal does clearly break the skyline in the important views from St Andrew’s Street and is considerably higher than the Bodley Library and First Court buildings which adjoin the site.” (paragraph 53). Neither the conservation officer’s comments nor the urban design responses mention the policy, although CLAG’s letter of 15 July 2026 asked the historic environment team to address it (document 9462822).
7. Criterion (b): “applicants should demonstrate and quantify the potential harm of proposals to the significance of heritage assets or other sensitive receptors (view of, backdrop and setting)”. The Heritage Statement attributes harm to four works within the listed ranges and none to the volume, mass and bulk of the new building (document 9423964, paragraph 6.4).
8. Criterion (c): “applicants should demonstrate through the use of scaled drawings, sections, accurate visual representations and models how the proposals will deliver a high quality addition to the Cambridge skyline and clearly demonstrate that there is no adverse impact”. The statutory consultee finds harm from “the excessive bulk of the new building” and the Council’s own officer finds that the stair tower “remains harmful to the listed building’s setting” (section 6.3, items 6 and 9). That demonstration cannot be made on this file.
9. Criterion (a): “applicants should demonstrate through visual assessment or appraisal with supporting accurate visual representations, how the proposals fit within the existing landscape and townscape”. The Townscape and Visual Appraisal states that “it is not considered that Policy 60 (and the prescribed assessment criteria) is relevant to the scheme”, provides two verified views, neither from a viewpoint Appendix F names, and calls the rest “illustrative only” (document 9423730, sections 2.2 and 5.4). Appendix F requires that “Local views must be considered on a case-by-case basis as part of the pre-application process” (paragraph F.21, page 336); the applicant’s agent wrote on 26 September 2025: “At no point during many months of pre-application discussions has any suggestion been made that detailed assessment against this policy should be made.” (document 7378931 on the register of 25/02161/FUL, paragraph 11).
10. Criterion (d): “applicants should demonstrate that there is no adverse impact on neighbouring buildings and open spaces in terms of the diversion of wind, overlooking or overshadowing, and that there is adequate sunlight and daylight within and around the proposals”. The applicant’s daylight and sunlight report of 8 September 2025 with its covering letter, document 9423969 (“the Daylight Report”), states its test at paragraph 3.4.6: daylight “may be adversely affected if after a development the Vertical Sky Component is both less than 27% and less than 0.8 times its former value.” On its Appendix 2, 37 of the 61 windows on the two lower floors of the building opposite fail that

test, 35 shown as “Retail” and two as “Hallway” (pages 28 and 29; the counts are CLAG’s from the applicant’s figures). Windows 7 to 10, one shop front, lose 55, 75, 87 and 96 per cent of their skylight. Paragraph 4.1.3 states: “Even though a number of the rooms/windows do not pass the numerical tests, this does not amount to non-compliance with the BRE requirements.”

11. The 2025 report declined to assess those windows because shop users “only visit for a short period of time before leaving” (paragraph 20.18, page 164), having quoted the BRE guide as applying to “any existing non-domestic building where the occupants have a reasonable expectation of daylight” (paragraph 20.17). P3(2)(b) of the NPPF requires proposals to “Not give rise to, or contribute to, an unacceptable level of access to daylight and sunlight for neighbouring residents and occupiers”, adding: “Adverse impacts of this nature should be avoided where possible, or else mitigated to an acceptable degree.” The occupants of a shop are the people who work in it (Tesco at [17]). The applicant’s letter of 1 August 2026 says the loss “is simply not a material planning issue and that appears to have consistently been the view of the Council’s Environmental Health Officer” (document 9481026, page 2); the Council’s environmental health responses (documents 9468203 and 9499190) state no view on daylight. The number of windows and rooms failing the test is “the extent of adverse impact on daylight whose acceptability had to be considered” (R (Rainbird) v Tower Hamlets LBC [2018] EWHC 657 (Admin) at [121](#)).
12. For the lane, criterion (d) and Policy 59(c), which supports development “where it is demonstrated that” “microclimate is factored into design proposals and that public spaces receive adequate sunlight”, require a demonstration the register does not hold. Appendix F states it: “Shadow studies need to be prepared that assess the impacts of overshadowing of buildings at different times of day and throughout the seasons.”; “Public and private open spaces and amenity areas shall not be in shadow for significant amounts of time of the day/year.” (paragraph F.43, page 341). The register holds three pages of perspective images with no author, date, plan, scale, shadow outline, area or duration (document 9439767), and one test of two hours of sun on 21 March, 21 per cent before and after (the Daylight Report, Appendix 4, page 37). The case officer told the Committee of 29 October 2025 that the building “does have an impact, especially within this six o’clock image” (CLAG’s transcript extract of the Council’s webcast of that meeting, Exhibit S24_2 to the design and development plan paper, entry 2). A decision not to inquire further is unlawful where “no reasonable council possessed of that material could suppose that the inquiries they had made were sufficient” (R (Khatun) v Newham LBC [2004] EWCA Civ 55 at [35], quoting Ex p. Costello).
13. Policy 61(a) asks that proposals “preserve or enhance the significance of the heritage assets of the city, their setting and the wider townscape”; Policy 61(c) that they “be of an appropriate scale, form, height, massing, alignment and detailed design which will contribute to local distinctiveness, complement the built form and scale of heritage assets and respect the character, appearance and setting of the locality” (page 187). Every heritage assessment on the register but the applicant’s finds harm to the Grade I setting from the bulk, and the city’s civic society finds that the bulk “stands in conflict with Policy 61” (Cambridge Past, Present & Future, 9 July 2026, register public comment, page 1). The 2025 report found accordance with the plan on a heritage effect it called “neutral with no overall harm” (paragraph 24.6, page 172), a finding the Council’s own officer no longer makes. The section 38(6) duty “can only be properly performed if the decision-maker, in

the course of making the decision, establishes whether or not the proposal accords with the development plan as a whole” (R (Corbett) v Cornwall Council [2020] EWCA Civ 508 at [27]).

6.6.2 The report must state the policy’s test in its words, without a figure in metres. It must then state whether the proposal “breaks the existing skyline” or is “significantly taller than the surrounding built form”, on the applicant’s paragraph 5.20, its own paragraphs 11.20 and 12.5, and the reading applied at Hobson Street. If either answer is yes, it must apply criteria (a) to (e) in their words and name, for each, the document in which the applicant made the demonstration. The demonstrations come only from the applicant, each a new submission under paragraph 7.6: verified views from the local viewpoints Appendix F names, the quantification of harm under criterion (b), and the shadow study under paragraph F.43. The report must also assess the shop windows as the windows of occupiers on the applicant’s own figures, state the numbers, and state whether the loss can be avoided by a lower building on the lane frontage.

6.6.3 On the register the criteria are unmet, and criterion (c) cannot be met while the statutory consultee and the Council’s own officer find harm. The design then conflicts with an explicit design standard of the development plan, the case in which DP3(3) directs refusal. S4(2)(c) of the NPPF names a proposal that would “Fail to comply with one of the national decision-making policies which state that development proposals should be refused in specific circumstances” among those whose benefits “are likely to be substantially outweighed by adverse effects”. The proposal conflicts with Policies 60, 61(a) and 61(c), and the decision in accordance with the plan is refusal unless the report names the material considerations that outweigh it. A report that finds the policy not engaged reads a threshold into a policy that has none, an error of law (Tesco at [17]). It repeats a comparison with 15.5 metres that the same report puts at 10.3 metres where it can be seen, a mistake of established fact (E v Secretary of State for the Home Department at [66]). It gives members a demonstration the applicant has not made as if made (Mansell at [42]).

6.7 Adopting the conservation officer’s degree of harm would misapply HE5(2)(c), which requires the degree to be identified before any weighing: the officer stated it only after weighing benefits against it

6.7.1 HE5(2) of the NPPF requires an assessment to identify, for each asset, whether the proposal would (a) “Have a positive effect, which is where the significance of a heritage asset would be enhanced, or better revealed”, (b) “Have no effect on the significance of a heritage asset”, (c) “Result in harm to the significance of a heritage asset”, in which case “The degree of harm should be identified”, or (d) “Cause the total loss of the significance of a heritage asset”. HE6(4) then weighs “the effect on the asset and its significance” against public benefits. The 2025 report advised harm and “neutral with no overall harm” at once (paragraph 24.6, page 172), the second ground the Council has accepted (the Statement of Facts and Grounds, paragraphs 60 to 62).

1. The conservation officer’s comments list four “positive heritage effects” and then state: “When considering the above heritage effects with reference to NPPF policies HE4 (1, 2), HE5 (1-4), HE6 (1-3) and HE9, the positive effects are not considered to fully outweigh the harm. On balance, the harm is considered to be at the lower end of the scale, and therefore NPPF policy HE6 (4) is engaged.” (page 4). The first sentence weighs, the second states the degree, and no degree before the weighing is stated anywhere in the comments.

2. Two of the four effects are not effects on the asset harmed. “An enhancement to the Central Conservation Area through the introduction of an architecturally superior building” is an effect on a different asset. “There might be benefits to other heritage assets that would not prevent ‘harm’ being sustained by the heritage asset in question but are enough to outweigh that ‘harm’ when the balance is struck.” (City & Country Bramshill Ltd v Secretary of State for Housing, Communities and Local Government [2021] EWCA Civ 320 at [78]). The fourth effect, sustaining the use of the listed building by the new library (section 6.5, item 14), is the optimum viable use point the Council has accepted was irrelevant.
3. The Court of Appeal distinguishes an internal balance where harm is avoided by mitigation from this: “[this] is quite different from balancing an admitted or found adverse impact . . . against separate beneficial effects ...” (Bramshill at [81], with [80]). The comments find the adverse impact (“remains harmful to the listed building’s setting”) and set separate beneficial effects against it before stating the degree.
4. The comments were written without the statutory consultee’s letters or the statement of matters before the officer. Both sets of comments list the documents reviewed as “Heritage Statement – Turley, May 2025”, “Design and Access Statement – Grafton Architects, May 2025” and “Townscape and Visual Appraisal – Caroe Architects, May 2025” (documents 9462719 and 9505685). They do not mention Historic England’s letter of 29 July 2025, which locates the harm in “the excessive bulk of the new building”, nor the Council’s own advice of 19 December 2024 (section 6.5, item 5). They answer scale with scale, finding the “overall scale, including the taller elements” appropriate to its context (page 3), where HE5(3) states that “it is the effect on a heritage asset’s significance rather than the scale of the development which should be considered”.
5. The other degrees on the file are higher. The expert heritage appraisal identifies the degree for each asset before any benefit is weighed (document 9458570, paragraph 58). The Victorian Society, the statutory consultee and the city’s civic society each find harm from the bulk of the whole building (section 6.3, item 6; documents 9455369 and 9464487; the civic society’s comment of 9 July 2026). Asked on 25 September 2026 to identify the category and the degree in the NPPF’s terms, the statutory consultee named neither (section 6.3, item 6), so the degree is the report’s to identify on the whole record. A report that edits out a specialist’s classification of the extent of harm downplays the harm and the weight members must give it (R (Kinsey) v Lewisham LBC [2021] EWHC 1286 (Admin) at [66]). The officer may differ from the Council’s own conservation expert but must put the expert’s advice before members (Kinsey at [62]).
6. HE6(1) requires that “substantial weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be)”, and HE6(3) that “Any harm to a designated heritage asset will be a matter of considerable importance and weight”. Harm to the setting of a listed building carries “considerable importance and weight”, and the section 66(1) duty “applies with particular force if harm would be caused to the setting of a Grade I listed building” (Barnwell Manor Wind Energy Ltd v East Northamptonshire DC [2014] EWCA Civ 137 at [22] and [28]). A harm reduced before it enters the balance is not given that weight, and the degree is the starting point for the duty to look at the alternative (section 6.5, item 11).

6.7.2 The report must identify the degree of harm to each asset under HE5(2)(c) before any positive effect is set against it. Its sources are the statutory consultee's letter, the expert appraisal and the Council's own advice of 19 December 2024, with HE6(1) and HE6(3) stated beside the degree. Either the conservation officer issues the comments again with the degree identified before any weighing and the two effects at item 2 out of the measure, or the report identifies the degree itself. If the report does so, it must give reasons that engage with the consultee's letter and the expert appraisal, and carry the comments to members whole. Historic England's letter of 29 July 2025 stands as its only assessment of the harm on the file, and the report must engage with it in its words.

6.7.3 A report that adopts "lower end" as stated "On balance", or edits out the higher degrees on the file, gives members a net figure as the harm. It repeats the second accepted ground on the 2026 record and misleads them on the extent of the harm (Mansell at [42]; Kinsey at [66]).

6.8 Passing over six more findings on the Council's own file would leave a policy or duty unapplied in each case: Policy 71 on the trees officer's finding, its own noise condition on the environmental health officer's finding, HE5(4) on assessments of another design, DM6(1)(a) on the consultees' unchanged advice, section 66(1) on the unwritten balance, and section 100D on the College's comments on the report

1. The trees officer's finding. On 9 February 2026, on discharge application 25/02161/CONDA, the Council's trees officer marked conditions 9 and 11 "cannot be discharged, as the information is unacceptable" and found that the temporary kitchen's footprint "has increased" beyond the application stage scheme. The officer found that tree T10 "will be deprived of natural hydration for at least two growing seasons, which is totally unacceptable", and wrote "I would respectfully request that conditions 9 & 11 are not discharged." (document 9296357 on that register). The same Tree Protection Scheme, dated 4 February 2026, is filed on this application. The trees response of 14 July 2026 finds it "provides adequate measures" and states "From an arboricultural perspective, there are no objections to this planning application" without mentioning the finding of 9 February 2026 (document 9461449); the response of 2 September 2026 defers to it (document 9509840). Policy 71 of the Local Plan provides: "Development will not be permitted which involves felling, significant surgery (either now or in the foreseeable future) and potential root damage to trees of amenity or other value, unless there are demonstrable public benefits accruing from the proposal which clearly outweigh the current and future amenity value of the trees." The report must put the finding of 9 February 2026 before members in the officer's words, apply Policy 71 to it, and either require a revised scheme from the applicant or explain the two findings. An in house specialist's objection "neither confronted nor even noted" is an error of law (*R (Liverpool Open and Green Spaces CIC) v Liverpool CC* [2020] EWCA Civ 861 at [77]).
2. The environmental health officer's finding. On 20 March 2026, on discharge application 25/02161/CONDG, the Council's environmental health officer found of the construction noise package that "no noise and or vibration monitoring / locations are proposed" and concluded "Therefore condition 7 cannot be discharged and the additional info requested above is required." (document 9348511 on that register). The package predicts, without mitigation, 81 dB during demolition, 87 dB during piling and 84 dB during general site activities at flats 18 metres away, against a criterion of 65 dB (document 9423966,

paragraph 1.12 and Table 4). The package filed on this application is identical. The Senior Planning Lawyer's email of 28 July 2026 answers "Officers agree" to CLAG's requirement that "no document approved in discharge of conditions under 25/02161/FUL is treated as approved for this application" (document 9495878). The report must put the finding before members and require a package with monitoring locations and criteria; otherwise it recommends a condition that binds the applicant to a document the Council's own specialist found could not be approved.

3. The assessments of another design. The Christ's Lane elevation on this register marks "24530 Top of Chimneys" (drawing 004700 P03, document 9423880); the Design and Access Statement presents the same elevation at "25430 Top of Chimneys" (document 9423961, page 44). The conservation officer's comments of 13 July and 26 August 2026 record that the Heritage Statement "does not include subsequent revisions made to the chimney height and internal layout (consented under 25/02162/LBC)" and describe the amendment as one "(which supersedes the heritage and design and access statements)" (documents 9462719 and 9505685). HE5(4) requires that "Decision-makers should be satisfied that assessments accurately reflect the effects on heritage assets caused by development proposals." Section 62(3) of the 1990 Act lets the Council require "such evidence in support of anything in or relating to the application as they think necessary", and CLAG's document accuracy letter of 25 September 2026 asked it to say what it requires. The report must name each document its own officer records as superseded and state what it does about it. A report that gives members an assessment of another building as the assessment of this one misleads them on a matter of fact (Mansell at [42]).
4. The consultees' unchanged advice. The sustainability officer's advice of 18 June 2026 (document 9435149) is the July 2025 text, and the further comment is "my comments of 18/06/2026 still apply" (document 9500177). The urban design response of 23 June 2026 appends the June 2025 assessment of the May 2025 Design and Access Statement (document 9439492), and its reply to the consultation on the NPPF reads in full "We have no further urban design comments following our response dated 23rd June 2026." (document 9500904). The environmental health responses recommend conditions naming the odour assessment of 16 May 2025 and the plant noise assessment of 23 May 2025 (documents 9468203 and 9499190). None was given under the NPPF or engages the statutory consultee's finding. The report must state what each consultee assessed and under which policies; a condition that binds the applicant to an assessment of a building it does not propose is not "Necessary to make the development acceptable in planning terms" (DM6(1)(a) of the NPPF).
5. The balance in writing. The report must state HE6(1) and HE6(3) beside the harm before it weighs any benefit. A committee left weighing harm "at the lower end of less than substantial" against benefits described as "substantial", "significant" and "modest" "in an untitled planning balance" repeats "the error made in Barnwell where the 'less than substantial harm' was wrongly treated as a less than substantial consideration" (R (Wyeth-Price) v Guildford BC [2020] EWHC 3355 (Admin) at [41](#)). In 2025 the balance was corrected orally at the meeting; the report must carry it in writing.
6. The applicant's comments on the report. Any comment by the applicant or its agents on a draft of the report, and any officer reply, must be placed on the register before the meeting. A comment the report is changed on is a document relied on in preparing it and a background paper under section 100D(5) of the 1972 Act. It "should be non-negotiable

that the officer responsible for the report has exercised some independent judgement in relation to any input received”, and “revealing the comments actually received and showing how many of them were accepted will be better” (R (Davis) v Isle of Wight Council [2026] EWHC 1718 (Admin) at [106(a)] and [106(e)]). The Council’s own disclosure records the case officer’s reply of 24 October 2025 to the applicant’s planning consultants on the published 2025 report: “Agreed, will update on the amendment sheet”. The reply is at exhibit page 4 of Exhibit TP3 to CLAG’s committee papers letter filed on 25 September 2026, from the Council’s response under reference FOI00020035.

6.9 Section 31(2A) would not save a grant: the balance on corrected inputs has never been struck, and a court could not tell what it would have been (Greenfields)

6.9.1 Section 31(2A) of the Senior Courts Act 1981 requires the court to refuse relief “if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred”. A finding on the alternatives (section 6.5), the tall buildings policy applied (section 6.6) and a higher degree of harm (section 6.7) are each inputs to the one balance the Committee alone strikes. That balance on corrected inputs has been performed on no page. “If the court cannot tell how the decision-maker would have approached matters, or what decision it would have reached, if it had not made the error in question, the requirements of section 31(2A) are unlikely to be satisfied.” (R (Greenfields (IOW) Ltd) v Isle of Wight Council [2025] EWCA Civ 488 at [73]). Where a report misstated a scheme central to the planning balance, the Planning Court held on 14 September 2026 that section 31(2A) “in the context of a planning decision poses a high hurdle” and that “It is not enough to conclude that the Committee may well have made the same decision.” (Old Chiswick at [101] and [102]).

6.10 No enactment requires the Council to decide before the judgment: article 34 permits an extension agreed in writing, and the Council’s own stated method requires the judgment

6.10.1 The Council’s letter of 26 August 2026 names no duty that requires a decision before the Court gives judgment, and there is none; the order of 29 September 2026 has since fixed the day on which the Court decides how the claim proceeds (section 6.1). The period under article 34 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 was, on the Council’s own request of 25 August 2026, to be extended to Friday 16 October 2026. Article 34(2)(c) permits “such extended period as may be agreed in writing between the applicant and the local planning authority”, and the register copy of the request (document 9503875) shows the applicant’s response box empty. If a written agreement exists, the period can be varied again in writing; if none exists, the statutory period ended on Wednesday 9 September 2026 and no date binds the Council. The only consequence of waiting is the applicant’s appeal against non determination under section 78(2) of the 1990 Act, on which the Inspector would have the judgment.

6.10.2 The Council’s own stated method is to consider the outcome of judicial proceedings and identify with officers and councillors the areas that require a change of approach, “and that would be the case here” (section 6.3, item 7). That identification cannot be made before the judgment that states the outcome with reasons.

6.10.3 The pressure for a decision before the hearing is the applicant's. Its agent wrote to Historic England on 14 May 2026, copying the Council's officers, that "The potential delay to the scheme has a major impact on the College" and that a duplicate application "should be possible before October". The letter is cited as held on Historic England's file, released under reference 26/04173, at Exhibit H1.3 to CLAG's Historic England FOI schedule, Annex H, filed on 25 September 2026. The Court has said whose risk that is (section 6.3, item 2).

6.11 Any claim will be an Aarhus Convention claim in the Planning Court

6.11.1 Any claim will be an Aarhus Convention claim under CPR 46.24, with the schedule CPR 46.25(1)(b) requires. CLAG will ask for it to be dealt with in the Planning Court as significant under Practice Direction 54D, paragraph 3.2, reserved to the judge who hears the judicial review on 20 October 2026, and listed for a rolled up hearing.

7. The details of the action that the defendant is expected to take

7.1 First, that the Council defers determination until the judgment is available and reports the application to the next available meeting with the judgment before members. The report is then to state, for each of the four grounds, what the Council accepted, what the judgment holds, and what the 2026 report does differently.

7.2 Failing that, that the Council confirms in writing:

- (a) that no decision notice will issue until the Court has given judgment and the judgment has been reported to the members who passed any resolution;
- (b) that it will inform the Court and CLAG within two working days of any resolution and of any decision notice;
- (c) that the report states those confirmations.

If the Council does not give the confirmation at (a), CLAG asks it to state the reasons, so that they are before the Court on 20 October 2026.

7.3 In either case:

- (a) that the report makes the findings in sections 6.4 to 6.8 in the way each section states, on the file, before it is written;
- (b) that the seventeen documents of 25 September 2026 are displayed on the register and listed as background papers under section 100D. A report that relies on them, or on Historic England's reply to them, while they are not open to inspection breaches section 100D. A permission was quashed for that breach in *R (Joicey) v Northumberland CC* [2014] EWHC 3657 (Admin) at [43] to [45] and [59];
- (c) that the report is open to inspection five clear days before the meeting (section 100B(3) of the 1972 Act);
- (d) that the reports of CLAG's consultants are appended in full, the 2025 ground for not appending them ("late representations") being absent;
- (e) that any comment by the applicant on a draft of the report and any officer reply are placed on the register before the meeting (section 6.8, item 6).

7.4 That the applicant's written agreement to every condition to be complied with before commencement, or a notice under regulation 2 of the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 ("the 2018 Regulations"), is on the file before any

decision notice issues. Section 100ZA(5) of the 1990 Act provides that planning permission “may not be granted subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition”. The Council is “minded to impose afresh all planning conditions” (section 6.3, item 8), and CLAG’s conditions submission of 13 August 2026 (document 9495871) sets out the point.

7.5 The Protocol asks a proposed defendant to say whether it agrees to take no action until its response has been provided. CLAG asks the Council to confirm by 5 pm on Wednesday 30 September 2026 that it will not report the application to the Committee before it has replied to this letter.

7.6 Several of the findings at section 6 require a new document from the applicant, on which those entitled to make representations must be heard. SCI paragraph 4.23 states: “It is at the discretion of the Local Planning Authority whether further publicity and public consultation is necessary when an application has been amended. In deciding if it is necessary, the Local Planning Authority will consider the criteria set out in Planning Practice Guidance (PPG) published by the Government. In most cases a period of 14 days is considered an appropriate period to allow for further comment.” The Council applied that practice on 19 August 2026, consulting again “To allow further representations to be made on the implications of the updated National Planning Policy Framework (NPPF) (17th August 2026) relating to the proposal.” (document 9499001). A document received after the report is published on Wednesday 30 September 2026 cannot be published for 14 days, considered and reported to a meeting on Wednesday 7 October 2026.

8. The details of any information sought

8.1 CLAG asks the Council to state:

1. whether the applicant agreed in writing the extension of the period for determination to 16 October 2026 (section 6.10);
2. which documents were before the conservation officer for the comments of 13 July and 26 August 2026, and whether the statement of matters and Historic England’s letters were among them (section 6.7, item 4);
3. whether the report will carry the ground by ground statement in paragraph 6.4.2, and what it will state about the status of the 2025 permission and of the conditions discharged under it;
4. whether any draft of the report has been or will be shown to the applicant or its agents before publication, on what dates, and whether the comments and the officer’s response will be placed on the register (section 6.8, item 6);
5. whether the applicant has given written agreement to any condition to be complied with before commencement, or a notice has been given under regulation 2 of the 2018 Regulations, with dates and terms (paragraph 7.4);
6. whether the Council will contend in any claim that section 31(2A) of the Senior Courts Act 1981 applies and, if so, which document on the file shows that the outcome would highly likely have been the same (section 6.9). If the Council names the document, CLAG will answer it before the meeting. If it does not, the file will show that the question was asked before the report was written and that no document was named;

7. whether the Council treats Policy 60 of the Local Plan as applying to the proposed building, and if not the reasons (section 6.6);
8. whether the trees officer's finding of 9 February 2026 and the environmental health officer's finding of 20 March 2026 will be before members in the officers' own words (section 6.8, items 1 and 2);
9. whether the Council will require any document under section 62(3) of the 1990 Act, which documents, and by what date (section 6.8, item 3);
10. whether it will consult again on any document received after 30 September 2026, and for what period (paragraph 7.6);
11. which embodied carbon figure for the consented design, and which costed basement option, the report will rely on, and where each is on the register (section 6.5, items 7 and 8);
12. for each of the seventeen documents of 25 September 2026 and the two documents published on 28 September 2026, the date received, the date sent to the Council's document system, and the day it first appeared on the register. For any document held back, the instruction under which it was held and the officer who gave it (section 6.2);
13. whether the report will place the order of 29 September 2026 before members, and what the Council will do if the Court proceeds to judgment on 20 October 2026 after a resolution to grant (section 6.1).

8.2 CLAG does not ask for the Council's legal advice. Each answer, and each absence of an answer, is a fact the report will be read against.

9. The details of any documents that are considered relevant and necessary

9.1 CLAG asks for the following documents, each relevant to the point named:

- (a) the applicant's written agreement to the extension of the period for determination to 16 October 2026, or a statement that none exists: the period that binds the Council (section 6.10);
- (b) the applicant's written agreement to any condition to be complied with before commencement, or any notice given under regulation 2 of the 2018 Regulations: section 100ZA(5) of the 1990 Act (paragraph 7.4);
- (c) the "explanatory text" for members on the judicial review, once settled, and the list of background papers under section 100D of the 1972 Act, when settled: the documents the report relies on (section 6.8, item 6; paragraph 7.3);
- (d) any requirement made under section 62(3) of the 1990 Act, with its date: which design the report assesses (section 6.8, item 3);
- (e) any comment by the applicant or its agents on a draft of the report and any officer reply: background papers under section 100D(5) of the 1972 Act (section 6.8, item 6).

10. The address for reply and service of court documents

10.1 Christ's Lane Action Group, c/o Christ's Lane, Cambridge CB1 1NP; [REDACTED]
[REDACTED] Please copy the reply to PlanningComments@greatercambridgeplanning.org for the register.

11. Proposed reply date

11.1 CLAG asks for the reply on deferral (paragraphs 7.1, 7.2 and 7.5) by 5 pm on Wednesday 30 September 2026, the day the report is to be published on the Council's own notice. It asks for the reply to the rest of this letter by 5 pm on Friday 2 October 2026. The Protocol allows 14 days and permits a shorter period in a particular case; the Council's own meeting date of 7 October 2026 leaves no 14 days. CLAG asks that the reply follows Annex B to the Protocol.

Yours faithfully,

Christ's Lane Action Group

