FIRST DIVISION, INNER HOUSE, COURT OF SESSION

[2026] CSIH 29
XA51/25

Lord President
Lady Wise
Lord Clark

OPINION OF THE COURT

delivered by LADY WISE

in the appeal under section 239 of the Town and Country Planning (Scotland) Act 1997

by

(FIRST) SHELL CHEMICALS UK LIMITED and (SECOND) SHELL UK LIMITED

Appellants

against

SCOTTISH MINISTERS

Respondents

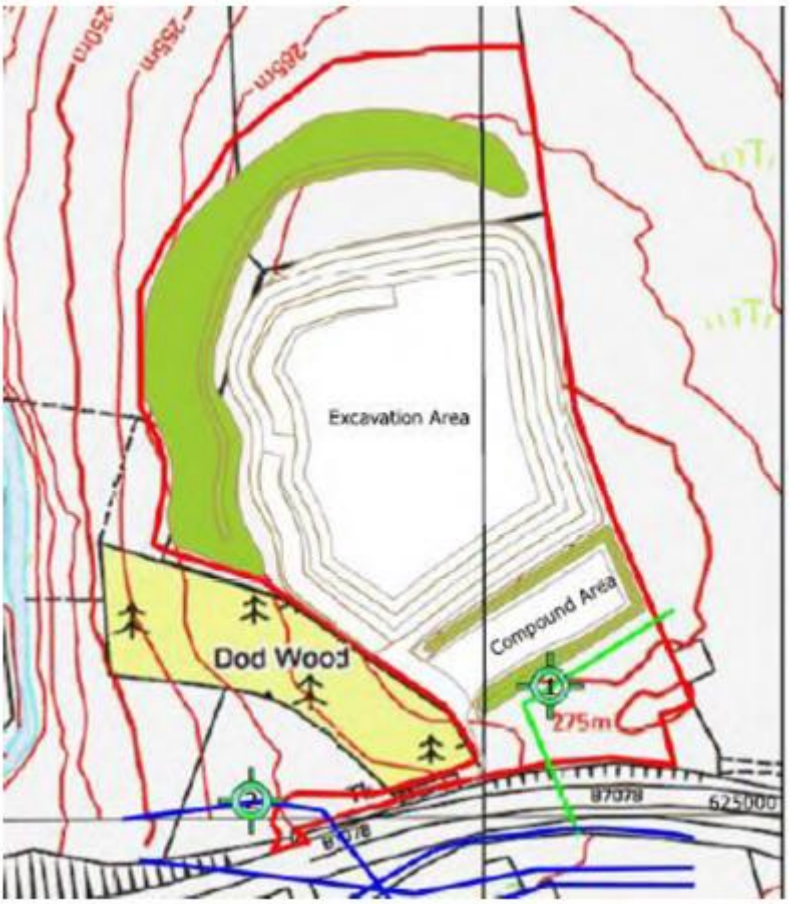
Appellant: Burnet KC; DWF LLP
Respondent: Haddow; Scottish Government Legal Directorate

16 June 2026

Introduction

[1] A high-pressure gas pipeline, known as the North West Ethylene Pipeline, owned and operated by the first and second appellants (Shell UK), transports ethylene gas south from the refinery at Grangemouth to a petrochemical plant in Stanlow, Cheshire. It is classified as a major hazard pipeline by the Health and Safety Executive (HSE). The pipeline crosses the southeast corner of Duneaton quarry near Biggar, South Lanarkshire, which is being developed by a local landowner, Hodge Plant Limited (Hodge). In 1991 Shell UK and

Hodge's predecessor in title entered into a deed of servitude agreeing the terms on which the pipeline passes through Hodge's land. That agreement includes provision regulating the position as between Shell UK and Hodge should Hodge wish to carry out any development on the property subject to the servitude. In the following drawing, the outline of the site is marked in bold and the current route of the pipeline as it crosses the site is illustrated by the green perpendicular lines at the bottom right :



[2] In this statutory appeal Shell UK challenges a decision of one of the Scottish Ministers' reporters dated 20 May 2025 to grant planning permission to extend the extraction of aggregates from the quarry and remove a previous planning condition requiring relocation of the pipeline before work commences. The appeal raises the issue of the necessity of conditions attached to planning permission.

Planning Background

[3] On 2 March 2009, planning permission was granted for the extraction and processing of hard rock aggregates at Duneaton Quarry until June 2029. The quarry produces greywacke, used for a range of products in the construction industry including road surfacing and concrete.

[4] Hodge then sought planning permission for an extension to the quarry, which was granted on 10 November 2020 by the local planning authority, South Lanarkshire Council (the planning authority), subject to conditions. Two of those conditions related to the pipeline. Condition 41 required that prior to the extension of the quarry the pipeline be relocated outwith the site boundary. All required authorisations from HSE for that relocation were to be submitted for written confirmation by the planning authority. Condition 43 obliged the developer to obtain written confirmation from Shell UK that the predicted vibration levels were within parameters acceptable to them. The reason for both conditions was specified as public safety.

[5] In August 2022 Hodge lodged a further planning application in terms of section 42 of the Town and Country Planning (Scotland) Act 1997 for new permission to carry out development without compliance with conditions 41 and 43 of the November 2020 permission. On 25 June 2024 the application was refused by the planning authority due to a concern about public safety. It was considered that there was no guarantee that public safety would continue to be protected if the conditions were varied. The planning authority took the view that the deed of servitude between Shell UK and Hodge was irrelevant to its function to protect the public interest as it was a private legal agreement. Accordingly, the

imposition of the relevant planning conditions would not duplicate the effect of other controls.

[6] Hodge appealed to the Scottish Ministers and in response to the concerns raised by the planning authority proposed an alternative condition in respect of the relocation of the pipeline (condition 41A). That proposed condition would have required Hodge to provide evidence to the planning authority that it was conforming to the terms of the deed of servitude between the parties. A statutory code (the Mining Code) is incorporated in a modified form into the deed. As so modified and incorporated it provides an area of protection around the pipeline. Hodge required to serve notice on Shell UK of any intention to mine in the area. Shell UK were then entitled to serve a counter notice prohibiting the proposed work from taking place. On service of such a notice by Shell UK they would become liable to pay compensation in accordance with a scheme set out in the code. Hodge and Shell UK have been involved in an ongoing dispute about these requirements.

[7] Condition 41A would have required Hodge to produce evidence of the service of a notice of intention on Shell UK in terms of the deed of servitude and to confirm that no counter notice had been served prior to any work commencing.

HSE guidance and relative statutory context

[8] Due to the "major hazard" status of the pipeline, in considering the application, the planning authority required to consult with the HSE, which provided standard advice in relation to proximity to pipelines. The advice was sought via the HSE online web app, the results of which did not advise against the proposal despite the site's proximity to the gas pipeline. The planning authority was advised to contact the operator of the pipeline before determining the application.

[9] As part of the appeal process, the reporter sought more detailed advice from the HSE on the proposal. In providing that advice, the HSE confirmed that they used three zone distances, which were calculated by a quantified risk assessment. The distances reflected information such as the pipeline diameter, wall thickness, maximum operating pressure, type of steel and depth of the burial of the pipeline. They explained that, when providing advice to planning authorities, they considered the size and nature of the proposed development, the inherent vulnerability of the exposed population and the ease of evacuation or other emergency procedures for the type of development proposed.

[10] The HSE acknowledged that Shell UK's concern was the potential risk the proposed development posed to the integrity of the pipeline and consequently its safe operation. Shell UK alerted the reporter to their private legal interests in the vicinity of the pipeline which could restrict the development within a certain proximity. They also noted that the applicable design and operation standards for the pipeline could restrict occupied buildings or traffic routes within a certain proximity of its route.

[11] The reporter sought further advice from the HSE on whether there were sufficient safeguards in place to secure public safety. The HSE advised that their role in providing advice for the purposes of the planning system was limited to specific situations as a health and safety regulator. They required to advise on risks to the public from an accident at a proposed development with a major hazard pipeline. In the HSE's view, assuming compliance with health and safety legislation, planning permission did not override health and safety requirements. Shell UK's duties under the Pipelines Safety Regulations 1996 to ensure that the pipeline was maintained and operated safely were emphasised. The developer also had duties under the Quarries Regulations 1999 for the safe operation of quarries. The HSE's interventions were based on the risk profile of work activities, which

confirmed that it would continue to engage with Shell UK to ensure that the risks from the pipeline were adequately controlled and sufficient safeguards were in place to ensure public safety.

[12] Regulation 15 of the Pipelines Safety Regulations 1996 provides:

> **"Damage to pipeline**
> 15. No person shall cause such damage to a pipeline as may give rise to a danger to persons".

The expression "no person" clarifies that, in addition to the pipeline operator, the Regulations apply to third parties. Regulation 16 provides:

> "**Prevention of damage to pipelines**
> 16. For the purpose of ensuring that no damage is caused to a pipeline, the operator shall take such steps to inform persons of its existence and whereabouts as are reasonable."

[13] Regulation 6 of the Quarries Regulations 1999 provides:

> "**General duties of the operator**
> 6.—(1) It shall be the duty of the operator of every quarry to take the necessary measures to ensure, so far as is reasonably practicable, that the quarry and its plant are designed, constructed, equipped, commissioned, operated and maintained in such a way that persons at work can perform the work assigned to them without endangering their own health and safety or the health and safety of others."

The reporter's decision

[14] The matter required to be determined in accordance with the development plan absent any material considerations indicating otherwise. In terms of Planning Circular 4/1998 on the use of conditions in planning permissions (27 February 1998) all conditions require to be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. The wide-ranging ability to impose conditions had to be exercised in a fair, reasonable and practicable manner. One

consideration was whether a planning condition would duplicate the effect of other controls, which would be unnecessary and unreasonable.

[15] All parties agreed that that the extension of the quarry could not go ahead without the pipeline being safely relocated. The question for determination on this point was whether a planning condition was necessary to ensure that the pipeline was removed before the works commenced.

[16] It was noted that existing condition 41 required the production of details demonstrating the pipeline's safe relocation. As Hodge was not the operator of the pipeline, they were accordingly dependent on Shell UK's cooperation. That was not a reasonable requirement to impose by way of a planning condition. Authorisations from the HSE were separate from the planning system and planning conditions need not be involved in the operation of regulations and other controls that managed safety risks associated with new pipelines. The reporter concluded that condition 41 was not reasonable.

[17] The proposed alternative condition 41A was, as Shell UK had submitted, unreasonable, impracticable and unenforceable. It relied on a separate legal agreement which added nothing to the operation of the servitude itself. Compliance with the servitude would have required to be evidenced; it was not clear how that would be achieved.

[18] Hodge's position was that it would be appropriate to rely solely on the existence of the servitude, whereas Shell UK and the planning authority had contended that condition 41 should be retained "on safety grounds and to retain planning control over the extension of the quarry for safety reasons". There was no dispute that the deed of servitude applied to the land in question and was intended to regulate an area of protection around the pipeline. There seemed no purpose in also having a planning condition to protect the pipeline.

[19] The decision recorded the HSE advice, noting that HSE neither objected to the proposal nor recommended that planning conditions be imposed to remove the pipeline or ensure that it was removed before works commenced. Had there been a safety imperative to impose such conditions, the reporter would have expected HSE to raise that. The statutory duties imposed to ensure the pipeline's safe operation were noted. While the issue of compensation under the deed of servitude had been raised, that was of no significance as it was unrelated to the public interest.

[20] The reporter concluded as follows (at paragraph 18):

> "While Shell UK has argued that risks require to be controlled by planning conditions, they have not demonstrated to me why the servitude and the existing requirements of health and safety regulations would be deficient in securing adequate public safety safeguards. Based on my assessment above, I do not consider that the extraction of minerals within a site that includes a major accident hazard pipeline would be left uncontrolled or unregulated if a planning condition were not applied to a consent. It is my conclusion, based on the guidance of the HSE, that adequate health and safety controls are in place."

[21] In relation to condition 43, that required Shell UK to confirm that vibration levels from the quarry were of an acceptable level. They would then control whether development could proceed. As Shell UK had no duty to the public, a planning condition in those terms was unreasonable. The reporter replaced it with a condition (number 39) that vibration levels from the development authorised by the permission when measured at any ethylene pipeline required would not exceed 50 mm/s ppv (millimetres per second and peak particle velocity). That condition appears to be acceptable to all and is not challenged in this appeal.

[22] On the environmental impact assessment (EIA), Shell UK had claimed that the level of detail in relation to the relocation of the pipeline did not meet the requirements of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (SSI 2017 No 102). The reporter considered that as the future route of the pipeline was

indicative and would be a separate project in its own right, a high-level assessment was sufficient to make a judgement on the likelihood of indirect effects arising from this appeal proposal.

Challenges to the reporter's decision: Analysis and decision

[23] The appellants advanced five grounds challenging the reporter's decision. We will address these in the order in which they were presented.

Reliance on private legal agreement and other controls

[24] Shell UK maintain that the agreement contained within the deed of servitude could not be relied on to regulate the development in planning terms; such private rights over land are irrelevant for planning purposes (*Brewer* v *Secretary of State for the Environment* [1988] 2 PLR 13; *Stringer* v *Minister of Housing and Local Government and Another* [1971] 1 All ER 65). The reporter had relied on an immaterial factor when he reached his decision (*Tesco Stores* v *Environment Secretary* [1995] 1 WLR 759). He had inverted the onus which was squarely on Hodge, in terms of section 42 of the Town and Country Planning Act 1997 Act, to satisfy the decision maker that the new permission should be granted with different or deleted conditions.

[25] Applying the test in *Elsick Development* v *Aberdeen City & Shire SDPA* [2017] UKSC 66; 2018 SC (UKSC) 75 at paras 29-32 condition 41 would not duplicate other controls as the HSE's power only extended to the prevention of the development if it endangered public safety. Unlike Shell UK, the HSE was not concerned with the protection of the pipeline itself and the requirement for it to be diverted prior to work commencing. The only means by which the safe implementation of the development could be ensured was by the imposition

of a planning condition. Neither health and safety legislation nor the private agreement would be sufficient to ensure that the development was completed as there was no enforcement mechanism. The planning authority had been correct in attempting to avoid a situation where a significant public safety issue would be outwith planning control.

[26] Only a planning condition could protect the pipeline which is an asset of Shell UK and the reporter had erred in concluding that such a condition would serve no purpose. While in terms of the deed of servitude Shell UK could prevent the development going ahead, it could not be used to facilitate the development.

[27] Counsel for the respondents highlighted that the servitude agreement was not the sole mechanism relied on by the reporter as restraining Hodge's development. Both Shell UK and Hodge were bound by their obligations under health and safety legislation not to cause damage to the integrity of the pipeline. Accordingly, it was unlikely that Hodge would commence work without being certain that it could be completed in a manner compliant with health and safety regulations. In any event, planning permission was simply, as the term suggested, a consent to develop the land. It did not constitute a requirement that the land be developed. Whether to implement the permission was a matter for the developer to consider.

[28] The reporter's reference (in paragraph 18) to Shell UK having not demonstrated to him why existing controls were not sufficient should not be read as him having inverted the onus; it was clear from a reading of the decision as a whole that the reporter was testing the provisional assessment he had made based on the HSE guidance.

[29] We reject the suggestion that the reporter conflated the statutory regime and the private law arrangements between Shell UK and Hodge and erred in placing undue reliance on those arrangements. The deed of servitude was part of the background to a dispute

between Shell UK and Hodge. It was not a material factor in the reporter's determination but was noted by him in the context of Shell UK having a separate mechanism to halt potentially damaging activity by Hodge should that be required. Central to the reporter's decision was an emphasis on the other controls that were in his view sufficient to secure public safety in the form of the requirement for the HSE authorisation and the statutory obligations on both Shell UK and Hodge. While the early part of paragraph 18 refers to both the private law arrangements and other safety controls, it is clear from the end of the paragraph that the decision on this issue was dependent on the HSE guidance.

[30] The key question for the reporter in relation to condition 41, as noted in paragraph 4 of his decision, was whether it was necessary. Necessity is one of the six policy tests set out in Planning Circular 4/1998: the use of conditions in planning permissions, paragraph 12. Paragraph 13 of the circular confirms that a condition ought not to be imposed unless there is a definite need for it. It is important but not sufficient that a condition be relevant to the permitted development; clearly not all matters relevant to the development require to be regulated by a condition.

[31] In presenting the appeal to the reporter Hodge had conceded that either planning conditions or other adequate controls would be required in relation to the interaction between the quarry and the pipeline to ensure safety. The reporter decided on the available material that sufficient controls existed to render a condition unnecessary as it would amount to duplication. It was the proposed condition 41A that would have introduced specific reliance on compliance with the terms of the deed of servitude and that had been discounted as inappropriate.

[32] In contrast with the emphasis placed in this appeal on the pipeline as an asset of Shell UK that required protection separately from the issue of public safety, the focus for the

reporter was quite properly on safety controls. Condition 41 had been imposed initially to protect public safety and would only require to form part of any subsequent permission if it was necessary in that context. While Shell UK had referred to protecting the integrity of the pipeline in submissions to the reporter, it seems to us that such protection is inextricably linked with public safety concerns; self-evidently, damage to a major hazard gas pipeline in the course of construction work would be likely to endanger public safety.

[33] Shell UK's insistence that the condition was necessary to facilitate the development and bring it under planning control is difficult to understand. It is Hodge that is concerned to ensure that the development goes ahead, not Shell UK. Any dispute between Shell UK and Hodge about whether compensation is payable in terms of the deed of servitude was not relevant to the decision. The point was whether public safety would be at risk in the absence of a condition.

[34] We have concluded that, reading the decision as a whole and in the context of the submissions made to him, the reporter did not fall into the error of placing undue reliance on a private legal agreement. The first ground of appeal accordingly fails.

Rationality and Reasoning

[35] Shell UK contend that the reporter took a contradictory approach to the imposition of condition 43 (now 39) and the perceived lack of necessity for condition 41. He appeared to rely on the terms of the servitude for the latter, but in relation to the former emphasised the absence of a duty on Shell UK to act in the interests of public safety under their private arrangements. This reasoning was inconsistent and inadequate (*Wordie Property Co Ltd* v *Secretary of State for Scotland* 1984 SLT 345).

[36] The respondents submit that the reporter relied on the statutory regime operated by the HSE to control the danger to the public when he considered the removal of condition 41. That was consistent with his approach to what was condition 43. He did not rely on the terms of the servitude for the removal of the planning condition concerning the relocation of the pipeline.

[37] We consider that this ground fails for similar reasons to those given in relation to ground 1. The reporter's decision was not dependent on the private law agreement between the parties in either of the two conditions that were contentious before him. It was not a question of giving Shell UK a *veto* in relation to one condition and not the other. Control of the vibration levels from quarrying operations, including blasting, was also a public safety issue. The earlier condition (43) left the assessment of what constituted acceptable vibration levels to Shell UK. That would be unacceptable and rendered a different condition necessary. The new condition (39) modified the previous one to link it to a monitoring regime imposed by another condition. Far from being illustrative of inconsistency, the reporter's differing decisions on conditions 41 and 43 reinforce that he applied the necessity test appropriately. The statutory and regulatory regime governing the pipeline was sufficient to render a condition on its diversion unnecessary, while the absence of controls other than by Shell UK in relation to the vibration levels led to a different conclusion on the application of the same test to that issue. Ground 2 also fails.

Reliance on the HSE advice

[38] Shell UK's position is that the reporter misunderstood or misinterpreted the HSE guidance and so took too much comfort from it. The HSE would only be able to intervene if the integrity of the pipeline was endangered. Absent a condition, the excavation work could

commence but then be required to stop, with no requirement that the pipeline be diverted. As it was accepted by all that the pipeline required to be relocated, that should be done prior to the commencement of any work, not when the HSE later intervened on health and safety grounds (*Hopkins Developments Ltd* v *First Secretary of State* [2006] EWHC 2823 (Admin); [2007] Env LR 14). It had not been in the HSE's contemplation that there would be no planning condition at all or that the development could safely take place without the pipeline being diverted.

[39] The respondents emphasise that the reporter had sought and clarified the position of the HSE on whether public safety would be adequately protected. The HSE's advice correctly assumed compliance with all health and safety requirements. Coupled with the statutory obligations on both Shell UK and Hodge, the reporter was entitled to rely on the HSE advice in concluding that the risk of harm was adequately controlled. It was unsurprising that weight was attached to the HSE guidance; Planning Circular 3/2015: Planning controls for hazardous substances, acknowledged that body's expertise in assessing risks presented by the use of hazardous substances. The reporter's decision to remove the requirement to relocate the pipeline was based on his assessment of the relevant material.

[40] We are satisfied that the reporter did not err in his approach to the HSE guidance. In their response of 20 December 2024, the HSE detailed the statutory obligations on the pipeline operator to ensure public safety, including safeguarding the pipeline itself. The reporter set out in paragraph 15 of his decision the significant features of those requirements. He was entitled to take into account the absence of any suggestion by the HSE that existing statutory restrictions would be inadequate to protect public safety. On any fair reading of the decision, it is apparent that the reporter assessed the information

from the HSE himself and reached his own conclusion. He separated the narration of the information received and the conclusion reached with its benefit (paragraphs 15 and 18). Shell UK's position was acknowledged but did not, in the reporter's judgement, displace the conclusion he had reached.

[41] We consider that the scenario postulated on behalf of Shell UK, that Hodge would disregard applicable health and safety legislation and commence work in the absence of a planning condition about the pipeline, is unrealistic. Counsel accepted that the HSE authorisation was required for any proposed diversion of the pipeline. The HSE has stated in terms that they would continue to work with both Shell UK and Hodge on any proposals to do that. The powers available to the HSE include the serving of a notice that would prevent works taking place without the authorised relocation of the pipeline, given the information that those works would otherwise risk public safety. In short, the reporter was correct to acknowledge the important role of the HSE in the implementation of Hodge's proposal and so to give appropriate weight to the guidance.

[42] The extent of reliance on the HSE guidance was a matter of planning judgement within the exclusive province of the reporter (*Tesco Stores*, *supra,* at 764). The decision does not display any irrational exercise of that judgement in relation to the HSE advice. Ground 3 also fails.

Adequacy of mitigation

[43] The fourth challenge relates to whether the absence of a condition relative to diversion of the pipeline resulted in a failure to comply with Policy 18 of National Planning Framework 4. That policy requires the impacts of development proposals on infrastructure to be mitigated. Shell UK contend that the removal of the pipeline from the site was the

mitigation that would make the proposal acceptable. To ensure that such mitigation took place, imposition of a condition relative to diversion of the pipeline before work commenced was required. Absent such a condition the planning authority could not control such mitigation and so the permission granted failed to comply with Policy 18 of NPF 4. There were no mitigatory measures that could be controlled by the planning authority.

[44] The respondents submit that the necessary mitigation did not require to take the form of a planning condition, but could be provided by statutory schemes, in this case health and safety legislation, such that a condition was unnecessary. It was reasonable for the reporter to conclude that any potential impact of the extension of the quarry on the pipeline would be mitigated by the parties' statutory duties.

[45] This ground of appeal cannot succeed for similar reasons to those we have expressed in relation to the first ground. There was more than one method of ensuring compliance with Policy 18. Imposition of a condition was unnecessary because of the statutory obligations and the role of the HSE. The reporter made specific reference (at paragraph 20) to Policy 18 of NPF 4 and the need to consider impacts on infrastructure. It was not inevitable that his application of that policy to the specific proposal under consideration would lead to the imposition of a condition.

Sufficiency of the Environmental Impact Assessment

[46] The final challenge relates to a finding that the Environmental Impact Assessment ("EIA") was adequate and did not require to assess in detail the environmental impact of relocating the pipeline. Shell UK argues that as the diversion of the pipeline was a necessary and inevitable part of the proposed project, it had to be identified and assessed as part of the EIA (*Raeshaw Farms* v *Scottish Ministers* [2026] CSIH 10; 2026 SLT 183). Where there are

indirect but inevitable effects of an application, they require to be assessed in the EIA *(R Finch)* v *Surrey County Council* [2024] UKSC 20; [2024] PTSR 988).

[47] Counsel for the respondents contended that the supplementary information provided by the developer did assess insofar as necessary the effect of relocating the pipeline. The reporter was not considering that relocation as a separate project; he had assessed the project as a whole at a high level as the diversion route was not yet known. It was not a case of project splitting as the EIA covered the diversion of the pipeline.

[48] Regulation 4(2) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 requires that an EIA assess " … in an appropriate manner… the direct and indirect significant effects of the proposed development". In *Raeshaw* the reporter's decision was flawed because there had been no proper evaluation of whether the wind farm and associated grid connection constituted a single project. The situation here is not analogous with *Raeshaw.* As the reporter records at paragraph 34 of the decision, a high-level assessment was sufficient as the precise effects of any environmental impact would not be known until the route of the new pipeline was determined, something that formed no part of Hodge's proposals. In any event, taking the EIA and the supplementary report together, these contained such assessment of relocating the pipeline as was possible given the uncertainties and Hodge's lack of control. That was the high-level assessment to which the reporter referred. There is no factual foundation for the challenge made in ground 5.

Disposal

[49] For the reasons given, none of the grounds of appeal advanced by Shell UK can succeed. The appeal is refused.