As the Weir claim has reached its conclusion, I wanted to report on the matter – reviewing the decision-points along the way and to remind us and our constituents what we did and why we did it. This is right, and hopefully addresses the questions raised at Parish Council meetings and in previous issues of the GGN.

The Planning Decision

You will all recall the outcome of the Planning Committee meeting in March 2016 in which the Planning Committee agreed, based on the officer's report, to grant planning consent for the demolition of part of the existing weir at Goring Lock and to replace it with three large Archimedes screws and build associated housing for generators and control equipment, as well as fish and eel passes, and a new flood control gate. Even after Parish Councillors meeting with the Planning Officers, and encouraging them to do further due diligence, the decision to grant planning permission was taken. At that same meeting, in the discussion about the weir scheme, one of the individuals on the planning committee made a comment that 'Goring had to learn that it isn't set in aspic', generating serious concern that the Planning Committee was not aware of the responsibility to protect and enhance the AONB.

That decision didn't settle well for a number of reasons, so legal advice was sought. You will also recall that at the time, there had been two major instances where the Parish Council felt SODC Planning had really dropped the ball: the weir decision, but also the rail electrification programme through the Goring Gap, neither of which seem to have been considered in the context of the AONB and with the Weir, adding the required regard to the Conservation Area status. Unfortunately, the only recourse against a granted Planning Decision is a legal one; the granting of planning permission can only be quashed by the Courts. There was a suggestion that a complaint to the Ombudsman would be able to address the matter, but an Ombudsman has no power to reverse a granting of planning decision. Not even SODC could reverse a decision without seeking a Consent Order from the Courts.

Pre-Action Protocol

Our legal advisers indicated that we had an arguable case before the High Court against SODC and potentially against the Environment Agency. We needed first to try to warn any potential defendants via a Pre-Action Protocol letter, giving them 14 days' notice to reply, and this needed to be completed prior to a final deadline to make the claim to the High Court (within 6 weeks of the planning decision). Timing was tight, so an Extraordinary General meeting of the Parish Council was called.

The Council agreed, at that Extraordinary meeting on 2nd April 2016, to send the Pre-Action Protocol Letter as advised by legal counsel. The letter, sent on 4th April, raised four grounds:

1. SODC did not complete a screening opinion, as required by Regulation 7 of the EIA regulations.
2. The irrational argument (in the Officer's Report) that the scheme would cause visual harm to the Goring and Streatley Conservation Areas but not the AONB (irrational because the AONB has a higher status than a Conservation Area). In this we also raised issues of other harm to the AONB, including noise impact that was disregarded in the Officer's report.
3. That SODC did not comply with its statutory duty under s66(1) of section 72(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 because they did not give 'considerable weight' to preserving Listed Buildings and their settings.
4. That SODC did not seek its own expert hydrological advice, relying on advice from the EA, which in turn relied on a 2010 report that failed to take account of recent flooding (in 2012 and in 2014).

A copy of the Pre-Action Protocol Letter is provided in Appendix A.

It should be noted that at this stage, SODC could have agreed to request of the Court (by Consent Order) to quash the planning permission. This one decision would have saved taxpayers the legal expenses to defend a decision that the court eventually deemed were in error.

A recent example in this regard is of Fish Legal (an organisation that acts for the Angling Trust and others). Last month they sent a pre-action protocol letter on behalf of Collingham Angling Association to Newark & Sherwood District Council. The N&SDC had granted planning permission for a hydropower scheme on the Trent without following European Rules on assessing impact on the environment. This is **exactly** the same point GPC raised with SODC in our 1st Ground. As a result of the PAP letter, S&NDC has agreed to go to the courts to revoke its decision. Had SODC taken the same view with our claim, GPC would not have needed to take further action.

High Court Claim

After a negative response by SODC to our letter, and a delayed response by the EA, we were advised that the only recourse was to take the matter to the High Court. We were also advised to include the EA as a defendant in the matter.

We had established a Weir Committee (as a sub-committee of the Parish Council) as our Chairman needed to recuse himself from future decisions due to a conflict of interest being both an SODC Ward Councillor and a Parish Councillor. We agreed in an 18th April 2016 Weir Committee meeting to submit a High Court Claim against SODC and the EA on the same grounds as the Pre-Action Protocol Letter.

There was a great deal of public support in the meeting, and no one spoke up to suggest that the High Court claim should not go ahead. We were aware of the potential costs, and the potential, if we lost the case, to pay a further £10,000. The discussion about the costs is clearly laid out in the minutes of that meeting (and shows how we grappled with that decision) – and though none of us loved the idea of spending public money, we felt that it was important to stand up and fight to protect the Conservation Area and AONB from a flawed decision. We worried more about what would happen if we didn't fight it.

The High Court Claim was accepted 'on the papers' meaning that we had satisfied the Court that we had an arguable case with our written application. SODC legal counsel attempted to refute the claim by arguing that 'it didn't matter, they'd have made the same decision', but the judge refused that argument. It was determined that ours was an Aarhus Convention claim, so we were limited to £10,000 costs to the defendants and they were limited to £35,000 in costs in the event we won. It should be noted, at all times, we stayed within the recoverable costs and SODC outspent the limitations on costs.

Prior to the hearing, we entered into negotiation with the Environment Agency (as they were also defendants in the case. It was our objective to resolve the issues with them, and subject to an appropriate agreement, we would seek Consent Notice to remove them as defendants. In the main, the agreement with the EA:

1. With regard to hydrological flood modelling, we were invited to make suggestions as to how the hydrology modelling can be improved to inform future flood assessments for the stretch of the River Thames.
2. In pursuit of better communications between the EA and the Parish Council, the EA agreed to assist in setting up, when desired, a "Goring Flood Forum" in which the EA will provide an EA technical officer to attend the Forum on an annual basis, or if there is a flood event, on a more frequent meeting rota to deal with any aftermath of a flood event, to ensure ongoing direct liaison between the parties.
3. Regarding permit applications and consultations on development consent applications, any new permit application received by the EA for activities within the Goring Gap/Goring Weir stretch of the River Thames, the EA will endeavour to notify the Parish Council about any

application made for a permit, including inter alia any flood defence consent, water extraction licence or water impoundment licence. The EA Partnership and Strategic Overview Team will endeavour to notify the Parish Council when they receive a flood risk activity permit.

4. In relation to any consultation on a development consent application for activities within the Goring Gap/Goring Weir stretch of the River Thames, the EA will communicate directly with the Parish Council or if more appropriate through the Forum in relation to any application for development consent which the Local Planning Authority sends to the EA for consultation.
5. Regarding negotiations in relation to a permit for a hydro-electricity plant at Goring Weir the EA will provide to their Estate's Department, any concerns of the Parish Council in relation to noise issues which may arise in relation to a hydro-electricity plant at Goring Weir, so that the surveyor acting on the negotiations is aware of the Parish Council's concerns prior to any contract for lease or licence being drawn up between the EA and the plant operator.

As a result, it was resolved in a Weir Committee meeting of 17th October 2016, to release the EA as a defendant in our claim, and therefore we would not argue Ground 4 of our Claim. And there were no costs to be awarded to the EA in the matter (as would typically be expected with a Consent Order releasing them as defendants) – each party agreed to accept their own costs in the matter.

At the same meeting we received a letter from the Goring & Streatley Sustainable Energy Ltd, who finally responded after several 'chases', and yet did not address several key points in our letter, and did not respond to our request for a meeting. Though the claim was against SODC and not the Sustainability Group, they were an Interested Party to the claim. It would have been helpful if they had engaged and addressed the very serious concerns we had about the specific benefits promised to the community and the contingency plan if the development began and would have to be discontinued. The scheme was misunderstood by many to provide 'local energy', and because this wasn't true – the structure of the company meant that a portion of the profits would be fed back to the community - we were also concerned as to the administrative costs and salaries expected to be paid to the Principals of the company and exactly how much of the profits would be used in Goring & Streatley. We didn't receive answers to those questions. Importantly, at no time, was there any indication from the Sustainability Group that they would not pursue the scheme, or that it was no longer viable.

It should also be noted that we had also tried to enter into discussions with SODC, but their solicitors informed our solicitors that there was no interest as they believed that they would win the case and that our grounds for the claim were unfounded.

The Claim was heard on 9th November 2016, by Mr Justice Cranston. In my view, SODC presented one very concerning argument, paraphrased along the lines of 'even if this weir scheme damaged the AONB, it doesn't matter, it's only a very small part of a large AONB'. Our response was strong in that 'a death by a thousand cuts' would gradually erode all the protections of the AONB. They also indicated (wrongly) that no one, in the consultation, had raised any concerns about the Listed Buildings. This was proven to be incorrect, and they needed to apologise to the court for misleading the judge. There were a number of other issues raised, and it was very clear that SODC merely wanted to win this case and chose arguments that were contrary to other situations in which they had argued exactly the opposite. As a resident and taxpayer in South Oxfordshire, I was hugely disappointed. It was very clear that they hadn't done their job properly on that application, and now were trying to defend the indefensible. Cllrs Wills and Hall were also in attendance to witness the arguments, and the three of us walked away feeling that our legal team had done an excellent job to put forward our case, and to argue the case put forward by SODC's legal team.

The judgment was handed down on 17th November, and though we won two grounds, the judge used his discretionary power to not quash the application. This was unusual since one of the grounds was a breach of legislation (not merely an administrative error, as was the first ground). Also unusual, there were no costs awarded to SODC from GPC. It was very clear that the judge was aware of the failings of SODC, as indicated in the final paragraph of his judgment.

> “For the reasons I have given, I refuse judicial review. However, in advancing the case for Goring Parish Council Mr Streeten has expertly exposed flaws in the Council’s approach to the grant of planning permission. I will consider the Council’s written submissions on the matter but against that background my view at this stage is that it is not entitled to its costs.”

Please see the full judgment at Appendix B.

Some days later, a full Order of the court was sealed, giving specific indication of the legal failures of SODC in the matter:

> “The court declares that the First Defendant’s (SODC) decisions did not comply with the duty in section 72 of the Planning (Listed Buildings &tc) Act 1990 and did not comply with the duty in regulation 7 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.”

For a copy of the order, see Appendix C.

Seeking an Appeal against the High Court decision

As it has been explained to me, there are three ‘steps’ that can be taken to seek an Appeal against a High Court decision: 1) request permission from the High Court judge who made the judgment; 2) request directly to the Appeal Court; and 3) if both are unsuccessful, file an application to ‘reopen the decision’. To set the context, the first is common – barristers routinely ask the judge for permission to appeal, and they typically refuse. To do the second, it is more robust, and much of the cost in the process is putting together the Appeal application (the detail of the claim needs to be argued). The third, called a 52.30 application, is not uncommon to request, but rarely is a hearing granted as they are mostly refused on application. The costs to request to re-open are minimal.

Application to the Court of Appeals

After we received the judgement, and the barristers request to the judge was unsurprisingly refused, the Weir Committee took legal advice and were advised that we had a substantial and arguable case for the Appeal on four specific grounds:

> Ground 1: The judge erred in finding that it was highly likely that the outcome would not have been substantially different if the Council had applied the correct test under section 72 of the 1990 Act.
>
> Ground 2: The judge was wrong to say that there would be no harm to the Areas of Outstanding Natural Beauty when he confirmed harm to the conservation areas. The Conservation Area, which falls within the AONB, is acknowledged in policy to contribute to the special character of the AONB.
>
> Ground 3: The judge erred in finding that the Council’s approach to acoustic harm to the AONB was lawful.
>
> Ground 4: The judge was wrong to conclude that the duty to investigate harm to listed buildings “must be triggered by at least someone either in the Parish Council or outside raising it as a potential issue”. The judge was in error to conclude that it was not necessary for the officer’s report to identify the listed buildings which may be harmed by the development.

On the 24th of November 2016, the Weir Committee agreed to seek an Appeal. There were, at the time, 43 e-mails sent to support the Parish Council in taking the matter further. Additionally there were supportive comments made at the meeting – with no one suggesting that we shouldn’t seek

appeal. I would remind again that we had only 21 days from the judgment in which to make this decision, and we made the decision based on the information we had at the time.

Our application for appeal was lodged with the Court on 8th December 2016. A copy of the application is attached at Appendix D
There have been some comments that the Council shouldn't have pursued the Appeal, not least because the 'hydro scheme isn't viable'. Firstly, I would remind everyone that we made the decision to seek an appeal at the end of November 2016, to meet the very tight deadline. At that time, there was news about the Sandford scheme going ahead (and later, it was installed – though not yet working up to the levels originally predicted). Another compelling challenge, of course, is that the Planning Permission goes with the land and not the applicant – so even if the Sustainability Group agreed they would not go forward, the planning permission could be used by another entity.

The Court of Appeals refused the permission to appeal in February 2017, but because of a recent change in procedures, we were not given permission to present our arguments in an oral hearing. See decision at Appendix E.

52.30 application
At that point, because of some perceived flaws in the response from the criminal judge, the 52.30 application was put in, with the desire to have the Appeal heard. That application was dated 2nd March, but accepted by the court on the 27th March 2017 (see Appendix F, to see the reasons that the decision should be reconsidered).

As Councillors will recall, but the public is unlikely to know, when we put forward the 52.30 application to provide the final request to re-open the decision and to grant an appeal (on advice from our solicitors) we were forbidden from speaking about it if and until allowed by the Court. We had even asked for permission to notify SODC and the Interested Party (the Sustainability Group) – and the Court was clear in the response that no one could be informed of the application.

I asked the barrister about the 52.30 application, and he set the context for me. In the past 14 or so years, since the current court rule about 52.30 applications were established, there have been on average 200 applications each year. In that time, only 11 applications were accepted for a hearing. Our weir claim was the 12th. Because it is rarely granted, we knew that there was something to our claim that merited it being heard. The court originally indicated that there was one day needed for the hearing – the first to 'dispense of' the 52.30 application, and then we would go immediately into the Appeal hearing. In other words, we had to have the Appeal hearing ready, with skeleton arguments presented to the Courts in the usual timeframes.

Two or three weeks prior to the hearing, we were informed that the judges hearing the 52.30 request to re-open and appeal, and if successful, the full appeal hearing would then be heard. This change by the court was after we had prepared the skeleton arguments for the appeal and all the pre-work had been completed.

The hearing was heard on 20th March, with the judgment handed down on the 25th April 2018. Please see the judgment for that hearing at Appendix G.

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After considerable personal introspection and reflection, I would like to encourage us as a group to continue to not be afraid if we are again faced with a decision to stand-up for what we feel is right for our community, and if necessary to invest in that decision. There have been requests that we should indicate that we would never do something like this again. I personally have difficulty in that – because it is impossible to know what will happen in the future, and that it is inappropriate to attempt to pre-determine future Councils' decisions.

What I would recommend, though, is that we remind all future Councils to weigh heavily the cost of taking an action vs the cost of not taking an action.

Approximate allocation	Dates of Payment	Amount (Ex VAT)	
Pre-Action Protocol	17/05/2016	£	2,492.00
High Court Claim	24/05/2016	£	7,832.24
	30/12/2016	£	15,663.68
Appeal	12/05/2017	£	3,694.18
	02/11/2017	£	4,727.50
	20/03/2018	£	2,235.70
Costs	20/07/2018	£	6,700.00
Less donations	15/09/2016	-£	6,000.00
	22/02/2018	-£	5,500.00
Total		**£**	**31,845.30**

There may be another small, final invoice from our own solicitors who have been involved in negotiating a reduced cost to SODC and may have some outstanding costs from the court hearing.

In this case, over the three fiscal years in which this case was pursued, the financial cost to households in Goring is (by rough calculation) less than £0.50/month. One could always say that we could have used that money elsewhere – that's true of course. We made the decision to prioritise protection of the AONB and the Conservation Area, and to force SODC to improve their handling of planning matters.

In this case, I believe we approached all the decisions regarding the weir with as much objectivity as we could, and we made those decisions taking expert legal advice. At all times we knew that we might not win the case, and that we might have to pay costs as a result. We managed the costs as best we could, knowing that it isn't cheap to take legal action – and we kept within the limits of the amounts we could recover if we won. Though we received considerable donations (over £11,000) to support us taking the claim further, we made the decisions without any firm commitment for the amount that would be raised. The donations were an indication of the support of the idea, but at no time was that the deciding factor in our decisions.

The outcome desired in this matter was to 1) attempt to stop what the Parish Council and many, many parishioners and other local people and groups felt was a seriously flawed plan that would damage the AONB and the Conservation Area and 2) to ensure that SODC improve their approach to planning and be more mindful of their consultations. Though we weren't successful in 1), we have made progress on 2). The judgement in the High Court case vindicated our concerns and I believe, was part of bringing about some improvements by SODC (though more are needed). It is easy to be critical in hindsight, but I feel, based on the information and advice we received at the time, I would probably make the same decisions at each step. We made logical, well-considered decisions – and the logic wouldn't change. It is difficult to put one's head above the parapet and take a stand, but we did, I believe for the right reasons, and for that there is nothing to be ashamed.

We can, though, learn a lot from the process. Most importantly, that we need to be clear to SODC in Planning Committee responses to planning applications. If we recommend refusal, we should be specific and detailed in our written response and reference the various planning issues (and now, Neighbourhood Plan policies as well). We need to be mindful of the specifics in protecting the AONB and the Conservation Area, and act as if we would need to defend our position in court (so hopefully we won't ever have to again). Also, we need to keep reaching out to and engaging with SODC, the EA, OCC, and all other public bodies that are required to comply

with the various legal requirements – and we should support them in their responsibilities, at the same time as holding them accountable.

Cllr Bryan Urbick
26th July 2018