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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT
[2020] EWHC 1472 (Admin)

No. CO/4722/2019
CO/3818/2019

Royal Courts of Justice

Thursday, 5 March 2020

Before:

MR JUSTICE HOLGATE

B E T W E E N :

WESTMINSTER CITY COUNCIL — Applicant

- and -

SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL GOVERNMENT — Respondent

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MS S. KABIR SHEIKH QC (instructed by Westminster City Council Legal Services) appeared on behalf of the Applicant.

MR M. WESTMORELAND SMITH (instructed by Government Legal Department) appeared on behalf of the Respondent.

J U D G M E N T

MR JUSTICE HOLGATE:

1 The claimant, Westminster City Council ("the Council"), has brought two claims under s.288 of the Town and Country Planning Act 1990 ("TCPA 1990") to challenge decisions issued by planning inspectors. The substantive hearing was listed for a one-day hearing on 5 March 2020. However, as recently as 26 February the court received an indication that the matters were likely to settle and that it was hoped that a draft consent order would be submitted for the court's approval by Friday, 28 February, or at the beginning of the week commencing 2 March 2020, only three days before the hearing. By an email sent at 1.38pm on 27 February the court directed that the order be filed by 10am 28 February.

2 A draft order was submitted later that day. It simply provided for an order whereby both claims would be discontinued, the hearing date vacated and the first defendant's costs paid by the claimant (to be assessed on the standard basis if not agreed). It was accompanied by a schedule to justify the making of the order containing only 4 terse paragraphs. They simply stated that the key issues in this litigation had been decided by the Court of Appeal on 18 December 2018, the majority of decisions by planning inspectors reflected that judgment, the legislation which had given rise to the issues had been repealed and the Claimant did "not consider it a proportionate use of resources to continue this claim to final determination". On any view it was a very straightforward document requiring little time to prepare.

3 The email from the court had required the parties to provide an explanation for the lateness of the settlement. It read:

> "The consent order is to be accompanied by a proper explanation as to why, notwithstanding the fact that CO/3818/219 has been fixed for substantive hearing since 10/12/2019, and the parties sought to have CO/4722/2019 listed at the same time, the parties failed to (a) comply with the directions made by Mr Strachan QC on 27/11/2019 and Sir Wyn Williams on 29/01/2020 as to the filing of trial bundles ad skeleton arguments and (b) notify the court in good time that these matters were to settle..."

The parties were also required to provide a detailed chronology of the settlement negotiations. They were informed that they might be required to appear on 5 March 2020 to explain the position depending on the answers received.

4 The explanation provided by the claimant remained unsatisfactory and so the matter remained listed so that these matters could be properly explained.

5 The first challenge, CO/3818/2019, related to a decision dated 20 August 2019 in which the inspector allowed two appeals brought by the second defendant, Maximus Networks Limited ("Maximus"), against a refusal by the claimant to grant prior approval in respect of a permitted development right relating to telephone kiosks. The claim was issued on 30 September 2019. The claimant had been concerned about the proliferation of development of this kind within its area. It had successfully challenged an earlier decision by an inspector on the ambit of this right – see the judgment of Sir Duncan Ouseley given on 5 February 2019 in *Westminster City Council v Secretary of State for Housing Communities and Local Government* [2019] EWHC 176 (Admin).

6 The main ground in the claim was that the inspector's reasoning did not accord with that judgment, which had given a more restrictive interpretation to the ambit of the permitted development right. The claimant explained that its concern related to the implications of the inspector's decision for a number of undetermined applications and appeals.

7 In fact, before this claim was issued, the Secretary of State had already made and laid before Parliament regulations which removed the relevant permitted development right for public call boxes. They came into force on 25 May 2019 subject to certain transitional arrangements.

8 An appeal was brought by the telephone operator, New World Payphones Limited ("New World"), against the decision of Sir Duncan Ouseley. On 18 December 2019, the Court of Appeal robustly dismissed that appeal ([2019] EWCA Civ 2250). New World applied to the Supreme Court for permission to appeal. That application remains undetermined as at 5 March 2020.

9 In CO/3818/2019, the first defendant, the Secretary of State, and the second defendant, Maximus, filed acknowledgements of service defending the inspector's decision. On 27 November, Mr James Strachan QC sitting as a Deputy High Court judge granted permission to the claimant to apply for statutory review holding that Grounds 1 and 2 were arguable.

10 On 10 December 2019, the court listed the substantive hearing to take place on 5 March. This gave the parties nearly four months to prepare for the hearing. The Secretary of State filed detailed grounds of resistance on 24 December. The effect of the judge's order was that the claimant was obliged to file a trial bundle by 6 February and a skeleton by 13 February. The two defendants were required to file their skeletons by 20 February. These directions were not complied with.

11 The claimant's second claim, CO/4722/2019, was issued on 3 December 2019. It relates to decisions issued by an inspector on 22 October 2019 in relation to the application of the same permitted development right to two call boxes. The grounds of challenge are essentially the same as in the first claim. On 29 January this year, Sir Wyn Williams granted permission to the claimant to apply for statutory review limited to Grounds 1 and 2. He directed that the claim should be heard on the same day as the first claim if practicable. He ordered the claimant to file a skeleton by 14 February and the defendants to file skeletons by 21 February. Those orders were not complied with. Shortly after the order made by Sir Wyn Williams, the court listed the substantive hearing of the second claim to take place at the same time as the hearing of the first claim.

12 As I have said, the court attempted to obtain an explanation as to why the proposed consent order was submitted to the court only six days before the hearing. A helpful response was provided by the Government Legal Department ("GLD") on 27 February. I regret to have to say that the claimant's responses on 27 February and 4 March, although helpful in part, were in other respects materially inaccurate and incomplete, despite its failure to comply with orders made by the court. Some of the questions were not answered properly. Certain answers suggested a failure by the claimant to appreciate the importance of complying with its obligations about the use of the court's resources and the answering of questions from the court and so it was necessary for the hearing to remain listed.

13 In an email sent to the court on 27 February the claimant stated that at the time when it responded to the application for permission to appeal to the Supreme Court it was advised by counsel to take stock of the position on the outstanding claims and review whether it was appropriate to pursue them given the clarity of the judgment of the Court of Appeal, the repeal of the permitted development right, the claimant's wider strategy, "the vast number" of appeal decisions which by this time had been favourable to the claimant and "importantly, by now, the relatively few outstanding appeals such that the mischief would not be repeated on a large scale in the future":-

> "The Council sought advice from counsel in respect of a number of issues arising from the taking stock exercise. Given the very high profile nature of the kiosk issues, the Council took time to consider and review its position carefully. The Council gave instructions to discontinue the claims for the reasons given in the schedule appended to the consent order and in the letter provided to the Court by the GLD. The Council immediately informed the parties of this decision on 12 February *and sought to agree a consent order. As explained by the GLD* there *then followed around 2 weeks of discussion on the costs issue*."

The words italicised did not accord with the explanation given in the GLD's emails of 27 February and 4 March, which are now agreed by the parties to be correct. The costs issue did not occupy the period of 2 weeks from that date. Instead, the claimant failed to send even a draft for consideration by the other parties until 20 February. This explanation was materially inaccurate as far as it went and it was also seriously incomplete.

14 The claimant's email did, however, accept that it should have notified the court of its intention to discontinue at the same time as it wrote to the other parties (ie. on 12 February 2020), but its failure to do so was an oversight and then says:-

> "The Council had been hoping to send an agreed order much sooner and had not anticipated the issues regarding costs to remain unresolved until as late as today. Nonetheless it ought to have kept the court informed and it apologises unreservedly for this."

15 In an email dated 28 January 2020 the court stated that the claimant's response raised questions and was unsatisfactory as it stood. It therefore directed that the hearing on 5 March should proceed and gave advance notice of issues needing to be addressed, such as when the claimant's counsel was asked to advise and on what matters, when the advice was given and when the claimant took its decision not to pursue the claims. Plainly this related to subjects which the claimant had thought it appropriate and helpful to include in its email dated 27 February notwithstanding any claim that might otherwise be made to legal advice privilege. The email also asked why the court's orders had not been complied with, why the court was not kept informed about the breaches of those orders and why no application was made to extend time, why there has been a delay in sending a draft consent order to the other parties and what issues there had been about the terms of the order.

16 The claimant and GLD sent written responses dated 4 March 2020.

17 What happened was as follows. On 12 February, the claimant sent the defendants a letter stating that the underlying issue of unlawful use of permitted development rights for telephone kiosks, as a way of circumventing the requirement for a separate advertisement

consent, had been comprehensively dealt with in the decision of the Court of Appeal to which I have referred. The letter then said:

> "The majority of the decisions taken by the Inspectorate are consistent with the position set out in the judgments; it is only the odd case where inspectors clearly do not understand or have not followed the guidance and current case law where these anomalies have arisen. Given that the majority of the appeal decisions have now been issued, the Council considers that the mischief caused by these rogue decisions is unlikely to recur. Going forward, this is also reinforced by the amendments to the GPDO which recognise the Council's position that kiosk development should not benefit from PD rights in the first place. Given the small number of outstanding appeals, the Council intends to take the matter up the Chief Planning Inspector at PINs rather than expending further time and resources in respect of these individual decisions."

That reasoning was essentially the same as that set out in the schedule to the draft consent order which was not submitted to the other parties until 8 days later and to the court 15 days later.

18 The Council maintained that, in its view, the grounds remained strong and would have been likely to succeed. The letter concluded:-

> "In light of the above I propose to write to the court notifying it of the Council's attention [I assume that should have read intention] and will shortly forward a draft consent orders (sic) for your approval."

19 That letter was sent only 1 to 2 days before the claimant's skeletons were due and at a time when the claimant was already in breach of the order to produce a trial bundle. The letter was sent only 3 weeks before the hearing. The obvious question it raises is, why did the claimant not appreciate sooner that it was not worthwhile to be devoting its resources to the claims in the manner explained? The considerations involved do not appear to have been particularly complex; they were well summarised in the passages to which I have referred. This letter and subsequent communications failed to show any real appreciation of the need for the court's resources to be managed efficiently for the benefit of all users and for the claimant to co-operate in that regard. Unfortunately, the claimant did not write to the court, as the letter had indicated it was proposing to do, to notify its intention not to proceed with the claims; nor did it forward a draft order "shortly" despite the straightforward nature of the drafting required.

20 Having heard nothing further from the Claimant, the GLD very sensibly emailed the claimant on 20 February requesting draft orders to be sent urgently, given that the hearing was only 2 weeks away, and asked for confirmation whether the claimant had in fact notified the court of the claimant's intention not to proceed with the claims. Only 20 minutes later, the claimant sent a draft order by email. Plainly, that could and should have been done around 7 February and at the very latest by 12 February.

21 The letter from the claimant's Solicitor dated 12 February led GLD to understand that he would notify the court that the claimant would not be pursuing its claims, and, naturally, would do so without delay. However, by 20 February GLD had not received a draft order from the claimant and the time limits for its skeleton arguments expired in one case on that

day and in the other, on the following day. In its letter dated 4 March the GLD accepted that it should have informed the court on 20 February that it would not be filing a skeleton because of the claimant's decision to discontinue. The solicitor involved says that although he had intended to do this he did not because instead his focus, like I may add that of the claimant, was on agreeing a draft consent order. He apologised for that failure.

22 But it should be recalled that it was the claimant which had the conduct of its claims and had decided to drop them. It was responsible for taking this decision so close to the hearing and had then told the other parties that it would notify the court. It was the claimant's delay in sending a simple consent order to the other parties which also contributed to the first defendant not filing skeletons in accordance with the court's orders. Furthermore, by the time the consent order was sent on 20 February, the fixture was only 2 weeks away and it is most unlikely that if GLD had contacted the court office at that stage, the hearing could have been used for another case. The real problem here is that the claimant did not tell the court around 7 to 12 February that it was not pursuing its claims. GLD's part in this sorry tale is relatively small and should not be overstated. GLD did not make it necessary for the court to hold the hearing on 5 March 2020.

23 The claimant has been asked to explain its failure to notify the court that it would not be proceeding with its claims. Despite the opportunities which have been given to do so on two previous occasions in writing and also at this hearing, it has not been able to give any satisfactory explanation as to why that straightforward and necessary step was not taken. This has simply been described as a mere "oversight", even though the author of the letter from the Council dated 12 February had told the other parties that he would notify the court and, moreover, he was reminded of the point in GLD's email of 20 February. There is no suggestion of anyone having had to deal with an excessive workload or something having a greater priority.

24 If anything, the concern which the court raised was exacerbated by a response in the claimant's letter of 4 March 2020 to the question, "Why was there a delay in the claimant submitting a draft consent order for consideration by other parties?" The context for the question is obvious; it arose from the chronology which the GLD had set out in their letter to the court on 27 February. The reply from the claimant was:

> "The draft was submitted not long after the initial letter was sent notifying the Secretary of State of the claimant's intention to withdraw the claims."

25 It cannot reasonably be suggested, in the context of an intention not to proceed with a claim which was going to be heard only 3 weeks later, that the draft order was "submitted not long after" 12 February. There was a delay of 8 days which has not been justified. The response even discourteously implies that the court was wrong to refer to the period of 8 days as a "delay" without saying why. The letter also reveals a troubling lack of awareness of the urgency to which GLD had drawn the claimant's attention and which should have been obvious to the claimant in any event. The claimant is a public authority which should be well aware of the obligations of a party participating in High Court litigation.

26 Furthermore, the draft order sent by the Council to the other parties on 20 February, somewhat cheekily made no provision for the payment of the first defendant's costs. Instead it suggested that there be no order for costs. The claimant has subsequently said in its letter to the court dated 4 March 2020 that it "could have issued a notice of

discontinuance under Part 38 of the CPR and in the circumstances of these claims the permission of the Court would not have been required. However, the Claimant had hoped to come to an agreement on costs and hence decided to seek to agree a consent order with the parties." The clear effect of CPR 38.6 is that normally the claimant must pay the first defendant's costs for a claim of this nature. But the claimant did not serve a notice of discontinuance. What its email of 27 February and letter of 4 March failed to reveal to the court was that it had been seeking to avoid paying the first defendant's costs *altogether*, whatever the position on the costs of the second defendant. It is plain that that was why the claimant chose to follow the route of agreeing a consent order rather than proceeding under CPR 38.6 and seeking a ruling from the court on costs.

27 The court has been given no explanation by the Claimant as to why the first defendant should not have been paid his costs in the usual way. On 21 February, GLD said that the claimant should pay the first defendant's costs and yet it took until 26 February for the claimant to tell GLD that it accepted this obviously undeniable point. Today it is said by counsel that internally the claimant had accepted liability to pay the first defendant's costs. But that is nothing to the point. On 24 February the claimant's Solicitor responded to GLD that he was still taking instructions. The claimant did not tell the first defendant that it would pay his costs until 26 February. There is no proper excuse for that delay which is all the more serious when added to the delay in sending the draft order to the other parties in the first place and the ongoing failure to tell the court what was happening.

28 I regret to have to say that the court was only made aware that the claimant had been attempting to avoid paying *any* costs to the first defendant by the information supplied by the GLD in its letter dated 4 March responding to the court's email of 28 February. The email from the claimant dated 27 February and its letter dated 4 March gave the court a very different impression.

29 By the time the First Defendant's costs were agreed, the hearing was only about a week away. Unfortunately, the behaviour of the main parties showed a lack of appreciation of the effect that the continuing delay in notifying the court that the hearing would not be effective would have on the use of the court's resources in the interests of all.

30 On 21 February 2020 at 05.09 pm, the second defendant had asked the claimant to pay its costs. Not unreasonably, the claimant refused. The second defendant dropped that suggestion at 2.34pm on 27 February. On the chronology provided by the GLD, that dispute added only 1 day to the substantial delay caused by the claimant's failure to agree with GLD to pay the first defendant's costs. Given the urgency of the situation the court could have been asked, if necessary, to resolve the issue about the second defendant's costs by written submissions, rather than delay telling the court that the hearing on 5 March would not be effective. The dispute over the second defendant's costs over that one week period could not justify a failure to notify the court that the claims would not be pursued.

31 Unhappily, the response to the court from the claimant in its letter dated 4 March did not properly explain the delay in agreeing to pay the Secretary of State's costs, notwithstanding the clear question which was addressed to it in the email from the court dated 28 February 2020.

32 The letter stated:-

> "The claimant had not expected the interested party to seek its costs as it had not submitted an AOS for the second Maximus claim, nor detailed grounds of assistance regarding the first Maximus claim. The Council had also understood the interested party had informed the court it was not taking any further part in the proceedings. Emails regarding judicial authority and costs were sent to the IP with a view to resolving this issue so that the order could be agreed without having to trouble the court to make a decision on this satellite issue. *The IP withdrew its proposal for costs on 26 February and the court consent order was agreed.*
>
> *There was initially a short consideration re costs sought by the Secretary of State but the Council was content to meet their costs. Therefore the order was agreed by the SOS, but there was an issue with the IP regarding payment of their costs as explained above.*" (emphasis added)

33 It is apparent that that passage gave the impression that the dispute with GLD over the first defendant's costs lasted only a "short" while and that the consent order was held up by an issue over the interested party's [i.e the second defendant's] costs. That is inconsistent with the clear and now undisputed chronology given by the Secretary of State. No satisfactory explanation has been given to the court as to why the letter was drafted in that way. Key parts of both that letter and the email dated 27 February from the claimant were lacking in the candour expected of litigants in the Administrative Court and the Planning Court, especially when answering questions posed by the court. I do not think it unreasonable to say that the passages to which I have referred gave a misleading impression (see also para. 13).

34 So, I conclude that the first aspect of delay relates to the time it took to notify the court of the withdrawal and for a straightforward consent order for discontinuance to be produced. For clarity, the delay which concerns the court relates to, first of all, the period between 12 February and 20 February when a draft consent order was first sent to the other parties by the claimant and, second, the delay until 26 February; during which time the claimant also sought to avoid the first defendant's entitlement to his costs and then delayed agreeing that inevitable liability with him. A draft consent order agreeing to pay the first defendant's costs on the standard basis should have been sent with the letter dated 12 February 2020 and the court should have been properly informed at that stage by the claimant as to what was happening with its claims.

35 There is another aspect of delay which has troubled the court, concerning the period which, broadly speaking, elapsed between December 2019, when today's hearing was fixed and the Court of Appeal dismissed the New World appeal, and the letter from the claimant to the defendants dated 12 February; a period of nearly 2 months. The claimant obtained permission to proceed from two different judges, in late November 2019 and in late January 2020, to proceed with its claims for statutory review. How did it come about that it thought that it was no longer worthwhile to pursue the claims? Because that is the basis upon which the claimant has decided to discontinue these matters.

36 I have already referred to the information given in the claimant's email dated 27 February and the questions it gave rise to in the court's email the following day. The court sought to obtain clarification from the claimant as to why its "stock taking exercise" resulted in a tactical decision not to continue with the litigation as late as 12 February, only 3 weeks before the hearing. The letter from the claimant dated 4 March 2020 says that the decision

to discontinue the action was taken on 7 February, it appears, by a senior officer in the Conservation and Design Department of the claimant. Even so, there was then a delay until 12 February in notifying the other parties, and the issue remains why could this decision not have been taken considerably earlier? Counsel gave advice in consultation on 22 January, but the claimant waited for that advice to be confirmed in writing on 7 February.

37 Since the claimant has placed great emphasis on its concerns about "rogue" decisions issued by planning inspectors, it is important to note that, so far as this litigation is concerned, that point relates to only four decisions. In response to a question from the court this morning, it appears that there may have been only two other "rogue" decisions issued between 22 October 2019, the date of the decisions challenged in the second judicial review, and 12 February 2020. Ms Kabir Sheikh QC confirmed to the court that "the vast majority" of the appeal decisions had been favourable to the Council.

38 The court has not been given any clear reason as to why the Council's view that it was not worthwhile to pursue the claim could not have been reached substantially before 7 or 12 February. I cannot see from the explanation given to the court, why this position could not have been reached earlier on, towards the beginning or middle of January, although I should record that Ms Kabir Sheikh QC did say that there were ongoing discussions about issues, "toing and froing in the thought processes of the Council" as to what should be done about the present proceedings. But she accepted that once the decision had been taken to withdraw, the Council should have informed the court.

39 At all events, even on the basis that a delay until early February 2020 was justified, it is clear that the Council's decision to discontinue occurred about four weeks before the date of the hearing. If the court had then been notified of this decision, the hearing on 5 March could have been used for another case. But because the court was not told until 27 February, that was not possible. Every time a party behaves in this way, the court's resources are wasted, and other litigants have to wait longer for their cases to be heard and judgment given than would otherwise be the case. Plainly, this is not in the public interest and it is contrary to the ethos of the Planning Court and its objective of delivering justice within efficient timescales.

40 I wish to record straight away that the vast majority of cases in the Planning Court are handled with great diligence and skill on the part of parties and their legal advisers. They comply with the directions made. Alternatively, they apply in good time for directions to be varied if necessary, and they comply with their duty under CPR 1.3 to help the court to promote the overriding objective in CPR 1.1. The court appreciates and is grateful for that continuing assistance.

41 This co-operation by the parties should include the timely discontinuance or settlement of claims and notification of the court that a hearing will not need to take place. First, this assists the parties directly involved by saving costs and reducing delay for them. Second, it helps the court and its users in general by avoiding the need for resources to be allocated to cases which can be resolved by agreement. It is important that such settlements are achieved in good time, whether it be a claimant who does not wish to proceed or a defendant who wishes to submit to judgment.

42 Over the last year, 141 cases were determined substantively at a hearing in the Planning Court. In addition to these, 11 claims were discontinued, 10 were withdrawn by consent,

and 61 were the subject of consent orders. Very broadly, the pattern is that just over one-third of the cases which are granted permission settle and just under two-thirds are litigated at a substantive hearing. The court's ability to deal with its caseload in accordance with the targets in PD 54E depends upon all parties taking a realistic view of their prospects of success. Settlements which occur at a late stage for no good reason undermine the efficient running of the court in the interest of all users and the proper use of court staff and judges in the Planning Court and indeed other parts of the court service.

43 I would say straight away that the behaviour which occurred here does not, in my experience, represent conduct typical of the claimant or its legal representatives or officials.

44 But unfortunately, looking at the position in the Planning Court overall, what happened in the present case is not uncommon. In a significant proportion of the cases dealt with by consent orders or withdrawal, the court was notified of the settlement less than 10 days before the hearing. In some instances, the court was notified after the judge had spent time, sometimes a day or more, pre-reading the papers, or even on the day of the hearing. It has therefore become important for the court to emphasise the need for parties to adhere to good practice and to correct and discourage bad practice.

45 I should draw attention to the very helpful publication "the Administrative Court Judicial Review Guide 2019". This is a publication available on the internet which, since its inception, has been reviewed and updated annually. The Preface states:-

> "It provides general guidance as to how litigation in the Administrative Court should be conducted in order to achieve the overriding objective of dealing with cases justly and at proportionate cost. …
>
> In recent years, the Administrative Court has become one of the busiest specialist Courts within the High Court. It is imperative that Court resources (including the time of the judges who sit in the Administrative Court) are used efficiently. That has not uniformly been the case in the past where the Court has experienced problems in relation to applications claiming unnecessary urgency, over-long written arguments, and bundles of documents, authorities and skeleton arguments being filed very late (to name just a few problems). These and other bad practices will not be tolerated. This Guide therefore sets out in clear terms what is expected. Sanctions may be applied if parties fail to comply."

46 Paragraph 12.2.1 of the Guide sets out the practice which has been applied in the Administrative Court and the Planning Court for many years:-

> "The parties must make efforts to settle the claim without requiring the intervention of the Court. This is a continuing duty and whilst it is preferable to settle the claim before it is started, the parties must continue to evaluate the strength of their case throughout proceedings, especially after any indication as to the strength of the case from the Court (such as after the refusal or grant of permission to apply for judicial review). The parties should consider using alternative dispute resolution… to explore settlement of the case, or at least to narrow the issues in the case."

This is undoubtedly an important aspect of the duty of all parties before the court to help it to further the overriding objective and also of the duty of candour (as explained in *R (Khan) v Secretary of State for the Home Department* [2016] EWCA Civ 416 at [48]).

47 Paragraph 12.2.7 states:-

> "If the parties are aware that a case is likely to settle without the further involvement of the Court they should inform the ACO as soon as possible."

Similarly, paragraph 22.6.1 states:-

> "The parties have an obligation to inform the Court if they believe that a case is likely to settle as soon as they become aware of the possibility of settlement. Such information allows judges and staff to allocate preparation time and hearing time accordingly. Failure to do so may result in the Court making an adverse costs order against the parties (see paragraph 23.1 of this Guide for costs)."

48 CPR 44.2(4) and 44.4(3) enable the court to take into account the conduct of the parties when deciding what order to make as to costs. This subject is further discussed at paragraph 23.1 of the Administrative Court Guide, which also refers to sanctions for non-compliance, for example, at paragraphs 17.6, 18.5 and 19.4.

49 None of the passages in the Guide to which I have referred conflict with any provision of the CPR or with any Practice Direction. They set out good practice for parties to comply with their duty to help the court to further the overriding objective in CPR 1.1, in particular, ensuring that cases are dealt with expeditiously and fairly and allocating the court's resources appropriately as between different cases (sub-paras. (d) and (e)).

50 PD 54A para.17 sets out the procedure for obtaining the court's approval to a consent order for the disposal of a case. This is particularly important where a defendant proposes to submit for approval an order granting substantive relief, such as a quashing order or a declaration. A judge does not rubber-stamp the order. He or she has to decide (inter alia) whether to approve the order and the statement of the law it contains about the basis upon which the decision is said to be erroneous (PD54A para.17.2 and 17.3). Therefore, the draft legal statement needs to be clear, correct, and contain adequate reasoning. Where the court approves a draft consent order of this kind, the statement contained in the order may well affect the subsequent re-determination of a case by a local planning authority or by the Secretary of State or a planning inspector.

51 Obviously, the decision-maker and the parties involved need to be able to understand clearly why the court has agreed to quash the decision and the legal errors which must be avoided in future, because these matters will generally affect the re-determination. The statement may also affect the application of the doctrines of issue estoppel and abuse of process. These considerations have been pointed out in *R (Kemball) v Secretary of State for Communities and Local Government* [2015] EWHC 3338 (Admin) at para.39; *Barker Mill Estates Trustees v Test Valley Borough Council* [2017] PTSR 408 at para.112 and, *Great Hadham Country Club Limited v Secretary of State for Housing Communities and Local Government* [2019] EWHC 1203 (Admin) at paras.19-23.

52 It therefore follows that a party contemplating submission to judgment needs to ensure that it initiates the necessary steps sufficiently early to enable all parties, fairly, to have a reasonable opportunity to agree the terms of the order and the statement of the legal basis upon which relief is sought from the court and for a judge to consider approving that order. This needs to be done sufficiently far in advance of any fixed substantive hearing so that the court's resources can be redeployed rather than wasted, and other cases may be heard sooner.

53 In addition, the parties are of course obliged to comply with the court's orders, including the time limits which are set for the filing of bundles and skeletons. Once again, the Administrative Court Guide contains helpful guidance at para.12.2.3:-

> "The parties must comply with the procedural provisions in the CPR, the relevant Practice Directions and orders of the Court (including orders by an ACO lawyer). If a party knows they will not be able to do so they should inform the ACO and the other parties as soon as possible and make the application to extend the time limit as soon as possible (in accordance with the interim applications procedure in paragraph 12.7 of this Guide)."

54 This aspect was considered by the Divisional Court in *R (the National Council for Civil Liberties (Liberty)) v Secretary for the State Home Department* [2018] EWHC 976 (Admin) where an application was made by the defendants for an extension of time for the filing and service of a skeleton argument for the substantive hearing after the time limit had expired. In para.3 of the court's judgment, it was stated:-

> "It is common ground that an application for an extension of time in such circumstances is akin to an application for relief from sanctions: see the decision of the Court of Appeal in *R (Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633; [2015] 1 WLR 2472, applying the well-known principles in *Denton and others v T H White Limited (Practice Note)* [2014] EWCA Civ 906; [2014] 1 WLR 3926."

The judgment referred to the three well-known stages involved. The court pointed out that breaches of time limits of this kind, for example the submission of skeletons, even if only to cover a period of a day or two, should not be regarded with equanimity. The reason is obvious. Skeletons are typically required to be served relatively close to the hearing date.

55 In the *Liberty* case, the court went on to grant the extension of time for the filing of the skeleton because of the public interest in the court receiving the submissions on behalf of the defendants, albeit at a late stage. But it went on to order that the defendant should pay the claimant's costs of the application for an extension of time in any event, and in that particular situation that those costs should be assessed on an indemnity basis. The court also explained why it took the view that, in order to give effect to that sanction, those costs should be outside the scope of the cost-capping order which had been made in that case (see paras.17 and 18).

56 There have been several decisions in recent times in the Court of Appeal emphasising the need for procedural rigour in public law proceedings. The *Liberty* case followed that approach. As I have pointed out already, in this case the directions made by two judges to enable this case to be heard today for the filing of the hearing bundle and for skeletons were to some extent not complied with. The court asked for an explanation as to why this

had happened, whilst appreciating that the claimant's proposal to settle the case had not been sent to the parties until 12 February.

57 In the claimant's reply of 4 March, the answer to Question 4, "Why was the order of Mr Strachan QC not complied with?", was as follows:-

> "The order was not complied with as the Council had decided not to pursue the claims on 7 February. The skeleton was due on 12 February but since the Council had decided not to pursue the claims on 7 February, instructions were not given to counsel to prepare the skeleton."

58 The same explanation was relied upon to explain non-compliance with the order of Sir Wyn Williams, and also to respond to the question "Why was the court not kept informed of these failures and an application made to extend the time limits?"

59 This response was misconceived. It was not for the claimant to arrogate to itself a decision not to comply with the orders made by the court because it had been waiting for counsel to produce written advice confirming that given in consultation on 22 January 2020, or because it had recently decided not to pursue these claims. Instead, the claimant should have been aware of CPR 1.3, the deadline expiring on 6 February for the production of a trial bundle, the imminence of the hearing (only 4 weeks away) and the need to avoid that resource being wasted. The claimant should have sought to take its decision not to proceed with the claim and to obtain approval of the straight forward consent order before that date, or, alternatively informed the court of its position and either served a notice of discontinuance or sought an extension of time for the procedural steps which remained to be taken in case the substantive hearing had to go ahead. If an extension could not be justified to the court, then the consequence would have been that the parties had to comply with the court's orders. Not contacting the court about the position, so that the court could manage its process, was not a permissible option.

60 Standing back from the facts of this case, I hope it will be helpful to put these points and concerns into a broader context. PD 54E sets time targets for the handling of claims for judicial review and statutory review in the Planning Court which are designated as "significant". In broad terms, the object is that claims which receive permission are to be heard by the court substantively within a period of about six months. Achieving these targets is dependent upon co-operation from parties before the court and upon a careful management of the court's finite resources, particularly the availability of those judges authorised by the President of the Queen's Bench Division to hear "significant" cases.

61 Consequently, the listing policy, which has been set out in the Administrative Court Guide for some years and is now to be found in Annex 4 of the current version, is relatively strict, even to the point where unfortunately, in some cases, it may be necessary for dates to be imposed so that cases are heard within an appropriate timescale depending on the availability of judges to hear such cases. For significant cases, the practice of the listing office is to contact parties within about a week of permission being granted. Normally, a substantive hearing is fixed for a date about three to four months from then, sometimes sooner.

62 From the moment when permission is granted, a defendant should be keeping under review whether it is appropriate to submit to judgment, and if so on what grounds. Likewise, a claimant should review the claim from at least the service of detailed grounds of resistance and any evidence in support to see whether that material affects the

assessment of the merits, notwithstanding the grant of permission to proceed because at that earlier stage the case crossed the threshold of arguability. Decisions on merit and any action to settle the case should be taken as soon as possible, bearing in mind that cases in the Planning Court generally proceed on a review of documentation. They do not depend on the hearing of live evidence. Whether the motive for settling a case is tactical or based upon a review of the legal merits of the litigation, it is imperative that the party desiring a settlement should act promptly.

63 Where a party (or parties) wishes to withdraw or settle a case which has been fixed for a hearing the Administrative Court Office must generally be told the position. The fact that the parties are discussing the terms of a draft order does not justify failing to do so. Similarly, a fixture coming up in the near future should not be retained so as to act as some sort of leverage in the discussions.

64 Delay in notifying the court that a case is likely to be, or will be, ineffective is likely to cause significant problems for the deployment of the court's resources and prejudice the interests of other court users. In general terms, the longer the delay, the more serious the consequences. Where a fixture is wasted access to justice is delayed for other users who may have a real need for their disputes to be resolved as soon as possible. Looking at the matter more broadly, it must be appreciated that resources are finite and that they have to be shared between the Planning Court and other important jurisdictions.

65 It may be helpful to explain that papers are prepared for judges by the court lawyers of the ACO about one to two weeks before a judge's reading day. If a case settles after that stage, as too often happens, the efforts of the court lawyers will have been wasted.

66 In any given sitting week, the typical pattern for a judge in the Administrative Court or the Planning Court is that Monday is devoted to reading papers for the cases which will be heard in that week, typically between Tuesday to Thursday. Friday is normally reserved for the preparation of judgments arising from the cases in that week. It follows that material which a judge will need to read should be supplied before a reading day.

67 It is unacceptable for a judge to spend time reading papers for a case only to find out subsequently that the matter has settled. But of course, simply submitting a proposed consent order or notice of withdrawal before the reading day will not address the problem of the court being unable to re-deploy its resources to other litigants. If a case settles only one, two or even three weeks before the fixture, it will usually be extremely difficult to find other litigants able to provide bundles and skeletons and to have their legal representatives available to step into the vacant slot.

68 What can the court do about a problem of this kind in terms of sanctions? In her submissions this morning to the court, Ms Kabir Sheikh QC pointed out that, under CPR 38, there is a general right on the part of a claimant to discontinue a claim provided that the procedure set out in the rule is followed. Of course, that entitlement does also depend on compliance with CPR 38.6 which, not surprisingly, lays down the principle that, unless the court orders otherwise, a claimant who discontinues is liable for the costs of a defendant. In the present case, there can be no doubt that that would have covered the costs of the first defendant. I need not say anything further about the position of the second defendant in this case.

69 But, taken literally, that would suggest that this procedure could be followed close to the date when the substantive hearing is to take place. Ms Kabir Sheikh QC, with great respect, did not acknowledge any means by which the court may control unreasonable conduct where a trial date has to be vacated because the claim has been withdrawn or the litigation settled at an unjustifiably late stage. Her suggestion that a practice direction be made misses the point that the court already has adequate and flexible powers to respond to unreasonable behaviour in the conduct of individual cases.

70 Mr Westmoreland Smith drew attention to the general provisions on costs in CPR 44 which I have already mentioned. Rule 44.2 sets out the court's discretion on costs. I refer to this in the context of the court being asked, in proceedings under CPR 54, to approve a draft consent order submitted by the parties. CPR 44.2(4) provides that the court, in exercising its discretion, will have regard to all the circumstances, including, amongst other things, the conduct of all the parties. It has not been suggested that, where discontinuance is pursued under CPR 38.2, the court's discretion under CPR 44 is removed (see CPR 38.5(3) and 38.6). In any event, where a matter is being settled by a defendant submitting to judgment, for example to the quashing of a decision, CPR 38 is not applicable.

71 As I have already said, it is possible for the court to mark its disapproval of inappropriate conduct by an award of costs. Where the relevant standard is met, for example in a serious case of misconduct, an award could be made on the indemnity basis (see, for example, the *Liberty* case). Sometimes the court will find it necessary or appropriate to ask for an explanation in court as to why a matter has been settled at such a late stage and to see whether there is any proper justification for that. The court expects the party or parties concerned to provide a candid and sufficiently detailed explanation in writing, so that it may not be necessary for more court time to be taken up in further correspondence or a hearing, as regrettably proved to be necessary in the present case. If a hearing should become necessary, the court may consider making an order for costs.

72 In sufficiently serious cases the court might decide that it is appropriate for a hearing, analogous to that which takes place under the *Hamid* jurisdiction, to be held (*R (Hamid) v Secretary of State for the Home Department* [2012] EWHC 3070 (Admin); *R (Sathivel) v Secretary of State for the Home Department* [2018] 4 WLR 89). But I would expect that to be a very rare occurrence in the Planning Court. Having said that, sometimes a *Hamid* hearing is ordered so that the court can inquire as to whether a litigant which has failed to comply with orders or rules (including CPR 1.3) or with good practice, has taken appropriate steps to ensure that that conduct will not be repeated. The object is not necessarily to discipline, but to point out and discourage bad practice and to promote proper and good practice.

73 In the present case, I had been considering whether to make an order for costs in relation to today's hearing against the claimant, and the possibility of awarding those costs on an indemnity basis. The written explanations provided by the claimant were most unsatisfactory for the reasons I have explained and canvassed with counsel this morning. It was those responses which made it necessary for the hearing to take place. The claimant had two opportunities to explain its position in writing and the court was placed in the position of having to rely substantially upon the material provided by the GLD in order to understand some important aspects of what had occurred. The position was not assisted by some of the oral submissions received by the court this morning which did begin to raise

doubts in my mind as to whether the necessary lessons from this experience have truly been learnt.

74 However, I recognise that a hearing of this nature has probably never taken place before in the Planning Court. Indeed, I am keen that it should not be necessary for it to be repeated at all often. I also pay particular attention to the stance taken by Mr Westmoreland Smith on behalf of the first defendant, who does not ask for any order in favour of his client in relation to today's costs. The GLD has apologised for not notifying the court of the position from 20 February 2020. That, of course, does not deprive the court of jurisdiction to order such costs, but, looking at the circumstances in the round, I have decided not to make an additional order of costs in respect today's hearing against the claimant.

Addendum to judgment

Further submissions for the Secretary of State

75 After my *ex tempore* judgment Mr Westmoreland Smith drew the court's attention to the possible need to consider how CPR 2.11 sits with my observations about applications to extend time limits. I gave the parties opportunities to make further submissions about this and any other additional matters, which I would be able to take into account when approving the transcript of the judgment. Both counsel made written submissions. In this part of the judgment I will address points made in so far as they have not already been covered and it is appropriate to do so.

76 Mr Westmoreland Smith discussed the implications of the overriding objective in CPR 1.1 and CPR 2.11 and 3.8. He explained how these provisions and parts of the Administrative Court Guide to which I have referred sit together. I found his analysis helpful.

77 In view of submissions made for the Claimant it is necessary to explain and to re-emphasises the overriding objective and the responsibilities of parties and their representatives in relation to that objective.

78 The court is responsible for giving effect to the overriding objective to enable cases to be dealt with justly and at a proportionate cost (CPR 1.1(1)). Under CPR 1.1(2) dealing with a case justly and at a proportionate costs includes, so far as is practicable "(d) ensuring that it is dealt with expeditiously and fairly; (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; and (f) ensuring compliance with rules, practice directions and orders." CPR 1.2 requires the court to seek to give effect to the overriding objective when it exercises any power given by the Rules or interprets any rule.

79 CPR 1.3 requires the parties "to help the court to further the overriding objective." As paragraph 1.3.3 of Civil Procedure points out:-

> "[CPR 1.1(2)(e)] has assumed increasing importance. The duties imposed on parties and their professional advisers to keep the court informed of developments that may affect the use by the court of its resources are of particular importance, as they articulate a central aspect of the new rules commitment to proportionality."

80 CPR 2.11 provides:

> "Unless these Rules or a practice direction provide otherwise or the court orders otherwise, the time specified by a rule or by the court for a person to do any act may be varied by the written agreement of the parties.
>
> (Rules 3.8 (sanctions have effect unless defaulting party obtains relief), 28.4 (variation of case management timetable – fast track) and 29.5 (variation of case management timetable – multi-track), provide for time limits that cannot be varied by agreement between the parties)"

81 Thus, it is only possible for the parties to extend a relevant time limit under CPR 2.11 if that agreement is made, confirmed or recorded in writing (*Thomas v Home Office* [2007] 1 WLR 230).

82 The ability to extend time limits is subject to certain exclusions, for example, where a practice direction, rule or order provides otherwise or where an order is subject to the sanctions regime under CPR 3.8. CPR 52.15(2) prohibits parties from agreeing to extend any time limit under CPR 52 or PD 52A to 52E. Appeals under ss. 207 and 289 of TCPA 1990 and s.65 of the Planning (Listed Buildings and Conservation Areas) Act 1990 fall within CPR 52 (see CPR 52.28 and PD 52D).

83 In the present case the time limits set by the procedural directions for a trial bundle and skeletons did not exclude or modify the application of CPR 2.11. But that does not mean that parties have *carte blanche* to agree to extend those time limits disregarding CPR 1.3. The parties' obligation under CPR 1.3 permeates the CPR, including reliance upon CPR 2.11.

84 Accordingly, Mr Westmoreland Smith rightly submitted that the courts have encouraged parties to agree extensions of time so long as they do not imperil a future hearing date or otherwise disrupt the conduct of the litigation (*Hallam Estates Ltd v Baker* [2014] EWCA Civ 661 at [12] and [30] – [31].

85 How does CPR 2.11 sit in relation to paragraph 59 above? A fundamental consideration is that the procedural timetable for the final steps to make a case ready for a hearing cannot simply be ignored. The parties might agree variations to the timetable under CPR 2.11 so long as the timing of that agreement and the variations agreed do not put at risk the hearing date or the court's preparation for the hearing. But even then, it would generally be the case that in order to satisfy their obligations under CPR 1.3 the parties should inform the court of that agreement forthwith, so that the court may exercise its case management powers as appropriate. If no agreement under CPR 2.11 can be reached in good time, then an application for extensions to the procedural timetable would still remain essential. In any event, the possibility of an agreement being made under CPR 2.11 should not distract attention from a further key implication of CPR 1.3. Parties in discussions over a settlement need to let the court know about that so that it can monitor progress and take steps to avoid a fixture being wasted.

86 Here the claimant's responses to the court's questions before the hearing made no reference at all to any agreement to extend time under CPR 2.11. The letter from GLD dated 4 March noted that the parties "*could* have agreed to extend time limits under CPR 2.11 without needing to trouble the court with an application" (emphasis added). In other

words, no such extension was agreed. In any event, no reliance could have been placed upon CPR 2.11 in the absence of a written agreement on an extension of time. There was none.

87 The time limits for the filing of the hearing bundles and the skeletons of all parties were breached. The parties focused their attention on the draft consent order, once it had been sent out as late as 20 February. They did not agree that draft until late on 27 February. They did not discuss extending any of the time limits, especially before they expired.

88 In reality, given the lateness of the letter from the claimant dated 12 February, even if the parties had made an agreement in mid-February to extend time limits (after some of them had already expired) that would not have discharged the parties' duty to help the court to comply with CPR 1.1(2)(e). The trial date was "imperilled" by the very fact that the claimant proposed to withdraw the claims so late in the day and then did not act with the urgency which the situation plainly required. Quite apart from that, if for some reason agreement had not been reached on the consent order and the claims had had to be litigated, there would have been a real risk that the lateness of any exchange of skeletons would have made it necessary to vacate the hearing date in any event. The skeletons would not have been ready in time for the judge's pre-reading day.

89 Typically, directions for the production of a trial bundle, skeletons and authorities require those steps to be taken 3 – 4 weeks before the hearing date. The facts of this case serve to demonstrate that the possibility of the parties agreeing to extend time limits under CPR 2.11 does not address the real concern here, namely that a settlement of a case as late as this without good reason and without keeping the court in the picture, whether a discontinuance, withdrawal or submission to judgment, is incompatible with CPR 1.1(2)(e) and 1.3.

90 If the Court is to have a good chance of redeploying its resources by listing another case, then it needs to be notified of the possibility of a settlement as soon as possible and typically at least 4 weeks before the fixture. In other words, pursuant to CPR 1.3 the parties should notify the court about the possibility of settlement before the time when they might otherwise be addressing compliance with time limits for the production of bundles and skeletons. There may be some cases where, unusually, there is good reason for not being able to achieve that, but the present case is certainly not one of them.

91 Mr Westmoreland Smith's analysis shows that even where a claim is discontinued under CPR 38, or where CPR 2.11 is relied upon to extend a time limit by agreement, the court may require a hearing to take place to address any procedural failures, which would include non-compliance with CPR 1.3. Any such procedural failure may be addressed by the exercise of the court's discretion under CPR 44 in relation to costs. I agree (see also Civil Procedure para. 1.3.2).

Further submissions for the Claimant

92 In summary, Ms Kabir Sheikh QC advanced the following new points which had not already been addressed:-

(a) The non-submission of a trial bundle and skeletons by the parties cannot be categorised as a clear breach of the court's orders in this case;

(b) The correspondence between the parties was tantamount to an agreement that the time limits in the orders be varied under CPR 2.11;

(c) The hearing on 5 March and the judgment which followed proceeded on a flawed basis that either the directions had to be complied with or an application made to extend time limits;

(d) The hearing on 5 March should not have taken place because there was no issue to be resolved as between the parties;

(e) The CPR encourages parties to settle disputes (see e.g. CPR 1.4(2)(f));

(f) The question of whether the claimant should pay the first defendant's costs was not an "open and shut issue".

93 Proposition (a) must be dependent upon proposition (b), otherwise there obviously was a failure to comply with the court's orders. Indeed, that appears implicitly to be accepted in paragraph 15 of the further written submissions. Proposition (b) is unsustainable for the reasons already given. The material before the court shows that the parties did not agree to extend time limits or even give any thought to that. The letters from the claimant's and first defendant's Solicitors with conduct of the matter (dated 4 March 2020) are inconsistent with the suggestion now being made solely by leading counsel for the claimant. This point was not raised during the hearing. Furthermore, the only explanation from the claimant's solicitor for non-compliance with the court's orders was that on 7 February 2020 the Council had decided not to proceed with the claims and so instructions were not sent to counsel. Indeed, Ms Kabir Sheikh QC's submission cannot stand with that explanation.

94 Proposition (c) is related to both (b), which I have already dealt with, and (d).

95 Turning to proposition (d), the hearing on 5 March arose for reasons which the claimant has been well aware of. They include the lateness of the decision by the claimant not to pursue the claims, the failure to tell the court on 7 February or very soon thereafter that the claims would not be pursued on 5 March 2020, the unreasonable delay in producing a consent order for the Court's approval, the waste of the court's resources and the unsatisfactory explanations given by the claimant in response to the court's questions. To some extent those explanations were inconsistent with the correct account given by GLD and the effect of certain passages was misleading (see paragraphs 13 and 33 above). There were ample reasons for the Court to hold a hearing into these aspects given that two attempts at obtaining explanations in writing from the claimant had been unsuccessful.

96 The Court is entitled under its inherent jurisdiction to govern its own procedure by (inter alia) taking steps to ensure that parties and lawyers appearing before it to adhere to proper standards of behaviour (see the Divisional Court in Sathivel at [2]. Those standards include compliance with CPR 1.3, as well as orders of the court and the principles of good conduct contained in the Administrative Court Judicial Review Guide 2019. Under the rubric of CPR 1.1(2)(e) and 1.3, paragraph 1.3.3 of Civil Procedure cited above, along with the relevant passages in the Guide, have particular importance. For the avoidance of doubt, there is no conflict between the passages in the Guide to which I have referred and the CPR. In this case there was a serious failure by the claimant to respect long-

established principles of good conduct which have been clearly explained and, in any event, are no more than common sense.

97 As to proposition (e), the CPR does of course encourage parties to settle disputes, but that is nothing to the point here. First, this was not a case where a dispute was settled or compromised on terms. Instead, the claimant chose not to pursue its claim because, according to the claimant, the pursuit of its claims would not be "a proportionate use of its resources", or in other words not sufficiently worthwhile to the claimant. Second, the real issue here was about the failure to notify the court about the claimant's decision that it would not be pursuing its claims. Third, the claimant did not simply file a notice of discontinuance under CPR 38.3. If it had done so, it would have had two basic choices. It could either have accepted liability for the defendants' costs under CPR 38.6 or asked the court to rule on the matter under CPR 38.6(1), whether in relation to one or both of those defendants. Instead, the claimant opted for a consent order. But then it wasted valuable time first by delaying the production of a draft consent order and then by disputing liability for the first defendant's costs, all without informing the court that it would not be proceeding with its claims. The second defendant's costs could easily have been dealt with, if necessary, by brief written submissions to the court.

98 As to point (f), the claimant was asked to explain why the question of whether the claimant should pay the first defendant's costs was not an "open and shut issue". The court has not been shown anything that was said, or could have been said, by the claimant to GLD to persuade the Secretary of State that he should not be paid any of his costs by the Council.

Lessons for the future

99 At the hearing Mr Westmoreland Smith told the court that the Solicitor handling this case for the Secretary of State had communicated the lessons to be learned from the failings in this case more widely within GLD. I am grateful for that indication.

100 I am also grateful to the Director of Law, Bi Borough Legal Services, for the letter she sent to the court on behalf of the claimant dated 12 March 2020 in which she "acknowledges that the failure of the Council to comply with the directions of the Court and notify it of our intention to discontinue proceedings fell below the standard of what is required by the Court" and she unreservedly apologises. Following the helpful indications given by leading counsel to the court during the hearing, I trust that the Council has taken steps to notify its lawyers that fixtures should not be vacated at a late stage for no good reason, as in the present case, and how that should be avoided in future.

101 As is clear from the authorities, one of the main purposes of a hearing such as the present one is to ensure that lessons are indeed learnt, not only by the parties, but also more widely, for the benefit of all court users, so that it becomes well understood (a) that the sort of conduct which happened in this case should not recur and (b) parties must comply with CPR 1.3 as well as court orders. Sometimes errors occur which cannot be overlooked by the court. It is important to see that such errors are put right. Looking to the future, I hope that parties will be assisted by the guidance I have sought to give, based upon the CPR and the Administrative Court Guide.

102 Since the hearing on 5 March this country has had to deal with the Covid-19 emergency. Strenuous efforts are being made to maintain the operation of our court and tribunal

system. The obligation on all parties under CPR 1.3 to help the court further the overriding objective has plainly become all the more important. The need to avoid a fixture having to be vacated and the court's resources wasted as the result of an unjustifiably late discontinuance or settlement must be self-evident.

CERTIFICATE

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This transcript has been approved by the Judge.