Neutral Citation Number: [2024] EWHC 3069 (Admin)

AC-2024-LON-001568

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/11/2024

Before:

Mr Timothy Corner, KC
Sitting as a Deputy High Court Judge

- -

Between:

The King
on the application of
Ticehurst Parish Council

Claimant

- and –
Rother District Council

Defendant

-and-
Jonathan Vine Hall

Interested Party

- -
- -

Harley Ronan (instructed by Khift Ltd) for the **Claimant**
Robin Green (instructed by Clare McGough, solicitor to the Defendant) for the **Defendant**
Simon Bell (instructed directly by the Interested Party) for the **Interested Party**

Hearing date: 24 October 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 29th November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives

(see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html)

Timothy Corner, KC:

INTRODUCTION

1. By this claim, the Claimant challenges the decision of the Defendant dated 28 March 2024 to grant planning permission for the construction of a "live work unit" and associated development on a site in the High Weald Area of Outstanding Natural Beauty ("**AONB**"); Land at Beech Farm, Hawkhurst Road, Sedlescombe (ref: RR/2022/840/P) ("**the Proposed Development**").

2. This is the second occasion on which the Claimant has challenged the Defendant's determination of the application for planning permission for the Proposed Development. The Defendant accepted that its first decision was unlawful and consented to an Order quashing that decision.

3. This claim concerns the Defendant's re-determination of the application. The Claimant submits that the Defendant has erred in its re-determination and brings three grounds of challenge.

4. First, the Defendant failed to properly interpret and/or apply paragraph 11(d) of the National Planning Policy Framework ("**NPPF**"). It purported to conclude, contrary to officer advice, that paragraph 11(d) was a material consideration in support of the proposal without considering whether paragraph 11(d) (i) and/or (ii) applied to the Proposed Development. The failure to do so was an error of law.

5. Second, the Defendant failed to give legally adequate reasons for its decision and/or failed to discharge its duty under s. 38(6) of the Planning and Compulsory Purchase Act 2004 ("**PCPA 2004**"). The Defendant's officers' advice was that the proposal was contrary to the development plan and that there were no material considerations in favour of the proposal. The Committee rejected the officer's advice and instead resolved to grant planning permission. The terms of the resolution fail to demonstrate that the Committee conducted the exercise required by s. 38(6), when read in light of the fact that the officers' advice had been rejected. The reasons in the resolution also fail to demonstrate a lawful interpretation and/or application of paragraph 11(d) of the NPPF.

6. Third, the circumstances of this case (and the quashing of the first decision in particular) gave rise to a duty of fairness on the part of the Defendant which required it to permit the Claimant to make representations to the Committee at the re- determination. The Defendant did not permit the Claimant to participate. The exclusion of the Claimant from participating at the Committee meeting was procedurally unfair and a breach of that duty, based on an error of law and/or was irrational.

BACKGROUND

The application for planning permission

7. By an application dated 1 April 2022 the Interested Party ("**IP**") applied for planning permission to construct the Proposed Development on a site in the countryside located within the High Weald AONB.

8. The Proposed Development includes construction of a mixed-use structure described as a "live/work" unit. The building is a prefabricated modular unit manufactured by a company known as Wunderhaus. The manufacturer describes the building as a "housing product" which is available in standardized designs. The Proposed Development was for model WA2. The full description of the development is:

   "Demolition of storage building and roadway. Construction of carbon negative live work unit, parking and restricted curtilage. Addition of landscape and biodiversity enhancements to the wider site and new access to the B2244. Stopping up of access to the northern boundary of the site."

The first determination of the application

9. When the application was made the IP was an elected member of the Council and Chair of the Defendant's Planning Committee.

10. On 21 July 2022 the application came before the Council's Planning Committee. The officers' report ("OR") recommended refusal. The officers considered that the proposal was contrary to the development plan (in particular, it was contrary to the spatial strategy and failed to conserve or enhance the scenic beauty of the AONB). The report further considered that the Proposed Development did not satisfy the requirements of paragraph 80(e) of the NPPF (now paragraph 84(e)), which provides an exception to the NPPF's aim to avoid the development of isolated homes in the countryside on the basis that the design of the dwelling is of exceptional quality. The officers considered that the modular design could be replicated on many other sites across the AONB and was therefore not exceptional. The officers accepted that the Defendant could not demonstrate a 5-year housing land supply, such that the "tilted balance" under paragraph 11(d) of the NPPF was engaged. However, the OR considered that "in line with paragraph 11 d) (i) of the NPPF, the identified harm to the AONB provides a clear reason for refusing the development".

11. The Committee resolved to grant planning permission and permission ("**the first planning permission**") was granted on 26 May 2023.

The first claim for judicial review

12. On 7 July 2023 the Claimant commenced proceedings for judicial review of the first planning permission. There were four grounds of challenge:

    a. The IP's participation in the Committee was a breach of the requirements of natural justice.

    b. The Committee failed to give adequate reasons for departing from the officers' report and resolving to grant planning permission.

    c. The Committee was materially misled as to the relevance of paragraph 80 of the NPPF (now para. 84). Paragraph 84 concerns isolated "homes" in the countryside but does not apply to mixed-use development.

d. The decision that the proposed development met the exception to the presumption against isolated homes in the countryside in paragraph 80(e) (now 84(e)) of the NPPF was irrational.

13. The Defendant and the IP consented to an Order (approved by the Court on 18 December 2023) quashing the decision on the basis that it was unlawful for the reasons set out in ground 1 of the Claimant's claim. The Claimant expressly reserved its position in the Order in respect of the other grounds. The Order provided for the application to be re-determined by the Defendant.

The re-determination of the application

14. On 14 March 2024 the application came before the Committee for re-determination. The Committee's re-determination of the application has given rise to the decision under challenge by this claim.

15. An officers' report was again prepared ("**the OR**"). The OR's recommendations were materially the same as those in the report prepared for the meeting in July 2022 at which the application was first considered. In particular, the OR considered that:

a. The Proposed Development was not in accordance with the development plan because it is outside a development boundary and located within the countryside: paragraph 8.2.3.

b. The location was isolated: 8.2.6. However, the proposal did not meet the requirements of paragraph 84 of the NPPF notwithstanding the suggestion in the application that paragraph 84(e) was satisfied. The officer placed particular weight on the fact that the proposed building was of a modular design and could be easily replicated. That was difficult to reconcile with it being "exceptional".

c. The proposal would cause landscape harm to the AONB in light of the design not being exceptional, the significant landscape changes to the site (including the removal of trees, the creation of a platform, hard standing etc.) (paragraph 8.2.37), and the proposed access reinforcing a linear development in the surrounding areas (paragraph 8.2.39). The harm resulted in a conflict with local and national policy concerning the AONB (including paragraph 182 of the NPPF).

d. The site was not in a sustainable location. The site would not be well located in terms of access to public transport and services and would undermine the aims of local and national planning policies, which seek to direct development, and that of residential accommodation, to settlements where there is ready access to services and facilities: paragraph 8.4.4.

e. The OR accepted that the "tilted balance" in paragraph 11(d) of the NPPF was engaged as the Defendant could not demonstrate a five-year housing land supply. But after applying, *inter alia*, paragraph 182 of the NPPF, the Officer considered that the harm to the AONB was a clear reason for refusing the proposal under paragraph 11(d)(i): paragraphs 1.3 and 9.4.

16. Accordingly, the OR recommended refusal.

The Claimant's request to speak at the re-determination of the application

17. On 6 March 2024 - before the Committee Meeting at which the application was to be re-determined - the Claimant contacted the Defendant to ask to speak at the meeting. On 7 March 2024, the Claimant's solicitors emailed the Defendant to explain the basis for the Claimant's request.

18. Paragraph 9.5 of Part 3 of the Defendant's Constitution sets out the rules regarding public speaking by Parish Councils at meetings of the Defendant's Planning Committee. It relevantly provides:

> "(1) A formally nominated representative of a relevant Parish or Town Council may register to speak at a Planning Committee meeting on:..
> -an individual householder planning application….
> -any minor/other planning application…
> subject to the following restrictions:
> (a) the Parish or Town Council must have made a submission on the application before the Agenda was published;
> (b) pre-registered their wish to speak, confirmed they are the formally nominated representative of the Parish or Town Council, identified the agenda item they wish to speak to and confirmed their contact details;
> (c) only one representative may register to speak in favour of or against any application and at the meeting may only speak for a maximum of five minutes; and
> (d)where the application relates to a development on the parish boundary, only one speaker will be permitted as nominated by the Parish or Town Council by resolution….
>
> (3) The Chair of the Planning Committee will exercise discretion at all times in relation speakers [sic] and the length of time allowed to speak."

19. On 11 March 2024 the Claimant's solicitors provided the contact details required by the Constitution.

20. Later that day - 11 March 2024 - the Council replied and refused the Claimant's request to speak. The following reasons were given:

> "The planning application site is in the Parish of Sedlescombe. Sedlescombe Parish Council has registered to speak at the Planning Committee meeting and made a submission on the application before the Agenda was published. The application site is not on the parish boundary. We have to apply the provisions as set out in our Constitution. Ticehurst Parish Council are not a relevant Parsh Council and as such have no entitlement to speak at the Planning Committee meeting under this provision. We are not denying Ticehurst Parish Council or any other Parish Council their right to object to the planning application. The Parish Councils have all made written representations on the applications which are set out in the Planning Committee report and will have been read by Members of the Planning Committee. To allow Ticehurst Parish Council to speak would open the Council up to challenge as this would be a departure from the rules as set out in our Constitution.
>
> There are similar provisions relating to Public Speaking Rights at Planning Committee at Paragraph 9.6 of Part 3 which allow members of the public who have made a submission

on the application before the Agenda was published to address the Planning Committee. We do not consider that the representation made by Ticehurst Parish Council comes under these provisions as they are not a member of
the public and their representation was not made on this basis but as a Parish Council."

21. The Defendant did not change its position thereafter and the Claimant was not permitted to make any representations to the Committee.

The Committee's decision on 14 March 2024

22. The Committee meeting to redetermine the application lasted for four hours. After debating the issues, a resolution to the effect that planning permission should be granted because of the positive environmental factors and that the proposal met the requirements of paragraph 84(e) was put to the Committee ("**the First Resolution"**):

"Notwithstanding officers' recommendation, to grant planning permission subject to conditions to be determined by officers based on the positive environmental factors and the exceptional landscape and design meet the requirements of paragraph 84E of the NPPF".

23. The First Resolution was put to a vote and a majority voted against it. The transcript shows that after the First Resolution failed, paragraph 11(d) was raised again. Cllr Bayliss proposed that the Committee "approve but under [paragraph] 11(d)" on the basis that the proposal was "a significant addition to the AONB".

24. The Committee was then advised by counsel (who had earlier read out paragraph 11(d)) that paragraph 11(d) was a material consideration in favour of the Proposed Development unless one of the two criteria in 11(d)(i) or (ii) are met. After a short adjournment, the following resolution was put to the Committee ("**the Second Resolution**"):

"Notwithstanding the officers' advice and recommendation, this Committee grant planning permission on the basis that this is an innovative design, not an isolated development, and the benefits outweigh the potential harm to the High Weald national landscape. Therefore we consider that this is a sustainable development under paragraph 11(d) of the NPPF"

25. A majority of the Committee voted for the Second Resolution. In the version of the Second Resolution contained in the minutes, the text says "any potential harm" rather than "the potential harm", but it was agreed by all parties that the minutes were in error, and that what the Committee resolved on was as per the previous paragraph of this judgment.

GENERAL LEGAL PRINCIPLES

Determination of applications for planning permission

26. When determining an application for planning permission, the matters to which a planning authority must have regard include "the provisions of the development plan, so far as material to the application" and "any other material considerations": section 70(2) of the Town and Country Planning Act 1990.

27. Section 38(6) of the PCPA 2004 provides that "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".

28. In ***BDW Trading Ltd v Secretary of State for Communities and Local Government*** [2017] PTSR 1337 ("***BDW Trading***") the Court said at [21], referring to previous authorities, that the decision-maker's duty under section 38(6) can only be properly performed if the decision-maker, in the course of making the decision, establishes whether or not the proposal accords with the development plan as a whole.

29. Unless there is an obligation in law or relevant policy providing otherwise, a planning authority is entitled to afford such weight to a material planning consideration as it thinks fit (subject to rationality).

General approach to challenges to local authority planning decisions

30. In ***R (Mansell) v Tonbridge & Malling BC*** [2017] EWCA Civ 1314, [2019] PTSR 1452 ("***Mansell***"), Lindblom LJ said:

"[41] The Planning Court - and this court to - must always be vigilant against excessive legalism infecting the planning system. A planning decision is not akin to an adjudication made by a court: see para 50 of my judgment in the ***East Staffordshire*** case. The courts must keep in mind that the function of planning decision-making has been assigned by Parliament, not to judges, but - at local level - to elected councillors with the benefit of advice given to them by planning officers, most of whom are professional planners, and - on appeal - to the Secretary of State and his inspectors. They should remember too that the making of planning policy is not an end in itself, but a means to achieving reasonably predictable decision-making, consistent with the aims of the policy - maker. Though the interpretation of planning policy is, ultimately, a matter for the court, planning policies do not normally require intricate discussion of their meaning. … [Planning officers and Inspectors] are entitled to expect - in every case - good sense and fairness in the court's review of a planning decision, not the hypercritical approach the court is often urged to adopt.

[42] The principles on which the court will act when criticism is made of a planning officer's report to committee are well settled. To summarise the law as it stands:…
(2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge: see the judgement of Baroness Hale of Richmond JSC in ***R (Morge) v Hampshire County Council*** [2011] PTSR 337, para 36 and the judgement of Sullivan J in ***R v Mendip District Council, ex p Fabre*** ["***Fabre***"] [2017] PTSR 1112, 1120…"

31. In ***R (Tesco Stores Ltd) v Reigate and Banstead BC*** [2024] EWHC 2327 (Admin) ("***Tesco v Reigate and Banstead BC***"), James Strachan KC (sitting as a Deputy High Court Judge) said, at [54]:
"The principle that Inspector's decision letters should be read and interpreted (and the adequacy of their reasoning judged) on the basis that they are addressed to a 'knowledgeable readership' applies with particular force to an officer's report to a planning committee, although in a different way. The purpose of an officer's report is not

to decide an issue or to determine an application, but to inform the committee of considerations relevant to the application. The report is not addressed to parties interested in the application, let alone to the world at large, but to the members of the committee, who can be expected to have substantial local knowledge and an understanding of planning principles and policies. The Court should guard against undue intervention in policy judgments made by planning committees and respect their decisions unless it is clear that they have gone wrong in law:……."

Reasons for granting planning permission

32. There is no statutory duty on local planning authorities to give reasons for granting planning permission. However, an authority can be subject to a common law duty to give reasons for doing so. Such a duty may arise where a decision maker grants permission for controversial development in the countryside in breach of the development plan, against the recommendations of officers: ***R. (CPRE Kent) v Dover District Council*** [2018] 1 W.L.R. 108 ("***CPRE***"). It was accepted by all sides that a duty to give reasons arose in the present case.

33. The classic statement of whether the reasons given are legally adequate was summarised by Lord Brown in ***South Bucks District Council v Porter*** **(No 2)** [2004] 1 WLR 1953 at [36]:

> "The reasons for a decision must be **intelligible** and they must be **adequate**. **They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues'**, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. **The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law**, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. **The reasons need refer only to the main issues in the dispute, not to every material consideration.** They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, **their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications.** Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision" [emphasis added].

34. In ***CPRE*** [2018] 1 WLR 108 Lord Carnwath at [35] referred to the above statement by Lord Brown as a "broad summary" and in relation to whether that statement applied to local authority decisions as well as decisions of the Secretary of State or Inspectors, he said at [42]:

"There is of course the important difference that…the decision letter of the Secretary of State or a planning inspector is designed as a stand-alone document setting out all the relevant background material and policies, before reaching a reasoned conclusion. In the case of a decision of the local planning authority that function will normally be performed by the planning officers' report. If their recommendation is accepted by the members, no further reasons may be needed. Even if it is not accepted, it may normally be enough for the committee's statement of reasons to be limited to the points of difference. However, the essence of the duty remains the same, as does the issue for the court: that is….whether the information so provided by the authority leaves room for 'genuine doubt….as to what (it) has decided and why.'"

35. Where a planning committee resolves to grant planning permission contrary to officer advice, the resolution in favour of granting permission is the principal means by which its reasons are discerned: ***R (Mid-Counties Co-Operative Ltd) v Forest of Dean DC*** [2017] EWHC 2056 [86] - [88] ("***Mid-Counties Co-Operative***") and ***R (Cross) v Cornwall Council*** [2021] EWHC 1323 (Admin) ("***Cross***").

NATIONAL PLANNING POLICY FRAMEWORK

36. The version of the NPPF in force at the date of the decision was the one published in December 2023. Paragraph 11(d) states:
"11. Plans and decisions should apply a presumption in favour of sustainable development…..
For decision-taking this means:….

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date[8], granting permission unless:
i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed[7]; or
ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."

37. Footnotes 7 and 8 of the NPPF state (with emphasis added):
"7 The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 187) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, **an Area of Outstanding Natural Beauty**, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 72); and areas at risk of flooding or coastal change." [emphasis added]

"8 This includes, for applications involving the provision of housing, situations where: (a) **the local planning authority cannot demonstrate a five year supply** (or a four year supply, if applicable, as set out in paragraph 226) **of deliverable housing sites** (with a buffer, if applicable, as set out in paragraph 77) and does not benefit from the provisions of paragraph 76; or (b) where the Housing Delivery Test indicates that the delivery of housing was below 75% of the housing requirement over the previous three years." [emphasis added]

38. Paragraph 84 of the NPPF states in part:

"Planning policies and decision should avoid the development of isolated homes in the countryside unless one of the following circumstances apply:…
(e) the design is of exceptional quality, in that it:
-is truly outstanding, reflecting the highest standards in architecture, and would help raise standards of design more generally in rural areas; and
-would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area."

39. Paragraph 182 of the NPPF relates to AONBs. I add that since November 2023, AONBs have been called "National Landscapes", but as the expression AONB is used in the version of the NPPF on the basis of which the application was determined (as well as by the officers and Committee) I will use the expression AONB in this judgment. Paragraph 182 states:
"Great weight should be given to conserving and enhancing landscape and scenic beauty in …Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas…The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas."

SUBMISSIONS

Claimant

40. In relation to *ground 1*, Mr Ronan for the Claimant submitted that it being clear that paragraph 11(d) of the NPPF was engaged because the relevant policies were out of date, the next question was whether limb (i) was met, having regard to the application of one or more of the policies referred to in footnote 7. If that was the case, the presumption in paragraph 11(d) could not apply. The policy relating to AONBs in paragraph 182 of the NPPF was a footnote 7 policy. If the application of any relevant policies in footnote 7 did not provide a clear reason for refusal, the Defendant needed to consider limb (ii).

41. The Defendant had erred in that it did not consider whether there were any relevant footnote 7 policies or apply them. Further, even if the Committee's conclusion was that the application of relevant footnote 7 policies did not provide a clear reason for refusal, the Committee was nonetheless required to apply limb (ii) of paragraph 11(d). It did not do so, because it did not determine whether adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.

42. Although the Defendant relied on the advice given to the Committee by officers at the meeting, that advice did not extend to paragraph 182 being a footnote 7 policy or the implications of that policy. The evidence is that the Committee was neither aware of paragraph 182 nor applied it, by giving great weight to the conservation and enhancement of the landscape and scenic beauty of the AONB.

43. In relation to *ground 2*, the court is solely concerned with the adequacy of the reasons given in the Committee's resolution. The reasons given in the resolution render the decision unlawful in that they show the Committee failed to determine whether the proposal accorded with the development plan overall, failed to apply section 38(6) of the PCPA 2004 and were legally inadequate with respect to paragraph 11(d).

44. In relation to the development plan, there were clear breaches of the development plan, and the OR set those breaches out. The Committee rejected the advice in the OR and therefore needed to draw its own conclusions as to whether the Proposed Development was in accord with the development plan. It did not do so. In any event, the Committee's reasons are not adequate or intelligible in relation to those issues. The reasons do not explain whether the Defendant considered the proposal to comply with the development plan or not, or why.

45. In relation to paragraph 11(d), the resolution does not disclose any intelligible reasons in relation to how paragraph 11(d) was applied to reach the conclusion that the Proposed Development was a "sustainable development under paragraph 11(d) of the NPPF". In relation to limb (i), there is no explanation as to the application of footnote 7 policies, in particular concerning the requirement in paragraph 182 of the NPPF to give great weight to the conservation and enhancement of the AONB. In relation to limb (ii), there is no explanation as to why the limb (ii) issue was decided as it was.

46. The deficiencies in the reasoning caused substantial prejudice to the Claimant as the Claimant is unable to understand how or why the principal issues were resolved or whether the Defendant acted lawfully in applying the relevant policies, or how the policy or approach underlying the grant of permission may impact on future applications.

47. In relation to *ground 3*, the Defendant's refusal to allow the Claimant to speak at the Committee meeting was unlawful because it breached a common law duty to act fairly towards the Claimant and was premised on an error of law as to the interpretation of the Defendant's Constitution. There was a common law duty to allow the Claimant to speak because of the Claimant's significant concerns about the appropriateness of the Proposed Development, its successful challenge to the first planning permission and the Defendant's acceptance that it had acted unlawfully in granting the first planning permission, enshrined in a consent order in which the Claimant indicated that it reserved its position on adequacy of reasons and the relevance of what is now paragraph 84 of the NPPF.

48. In relation to the Constitution, the Defendant was wrong to say that unless part or all of a development proposal is within a parish council's area it could not be a relevant parish council. Whether a parish council is "relevant" is a matter of judgement in any particular case.

49. The Claimant had suffered prejudice from the Defendant's refusal to allow its representative to address the Committee, as the Claimant was prevented from making submissions on the applicability of paragraph 84 of the NPPF (including whether a "live work unit" was a dwelling), explaining its concerns with respect to its parish and beyond about whether the grant of planning permission for the Proposed Development would set an undesirable precedent, and explaining why the Defendant was wrong to conclude that the Constitution prevented it from speaking and that the chair had a discretion to allow the Claimant to participate.

Defendant and Interested Party

50. As to *ground 1,* Mr Green for the Defendant, supported by Mr Bell for the IP, submitted that members of the Committee visited the site before the application was determined

and were referred to the relevant policies. As Mr Green put it at the start of his oral submissions, the essence of the case was a balance of the harm to the AONB against the benefit of the development: a classic planning judgment. It was clear from the resolution which the majority approved that the majority, who evidently had both harm to the AONB and paragraph 11(d) of the NPPF well in mind, were not satisfied that either limb (i) or (ii) applied.

51. In relation to paragraph 182, Mr Green, supported by Mr Bell, said that the burden was on the Claimant to show that the Committee had failed to attach great weight to conserving and enhancing the AONB, and that in any event it was clear that the Committee had indeed done so. The Committee were aware of AONB policy; it was their "bread and butter" because over 80% of the Rother District was in the AONB. Further, the Committee's attention was repeatedly drawn to paragraph 182 by officers in the OR. Finally, and most importantly, the fact that the Committee attached great weight to conserving and enhancing the AONB was shown by the fact that the AONB was the issue on which it focused in the Second Resolution, leading to the grant of planning permission.

52. Mr Bell added that although there was no reference in the OR to "great weight", each member of the Committee received by hand delivery from the IP a copy of the pre-application advice dated 17 March 2022 from the planning officer of the High Weald AONB Joint Advisory Committee. Appendix 2 to that advice is headed "National Planning Policy for Areas of Outstanding Natural Beauty". The first sentence says that the NPPF "paragraph 176 requires **great weight** to be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty…". The final paragraph says:

    "Areas of Outstanding Natural Beauty are listed in footnote 7 and the most relevant polices in the Framework are paragraphs 176 and 177. A recent court of appeal case [the Court of Appeal decision in ***Monkhill Ltd v Secretary of State*** [2021] PTSR 1432 ("***Monkhill***")] confirms that, if a proposal's impact on an AONB is sufficient to provide a clear reason for refusal under NPPF 176 or 177, then the presumption in favour (or 'tilted balance…') should be disengaged. The decision-maker should therefore conduct a normal planning balancing exercise, applying appropriate weight to each consideration, to come to a decision. This will of course include giving great weight to the AONB as required by NPPF 176."

53. In relation to *ground 2*, the Defendant and IP submitted that members were advised that the application was to be determined in accordance with the development plan unless material considerations indicated otherwise, that the Proposed Development did not comply with the development plan, that the NPPF was a material consideration, that the Defendant was unable to demonstrate the requisite housing supply and the consequences of that. The overarching issue for members was therefore whether the presumption in paragraph 11 (d) that planning permission should be granted was disapplied. Plainly, they held that it was not, concluding in their resolution that "this is a sustainable development under paragraph 11 (d) of the NPPF."

54. That the development was contrary to the development plan was not controversial, but in the absence of a five-year housing supply the presumption in paragraph 11(d) applied. Following a site visit members took a different view from the case officer on whether the Proposed Development would be isolated, whether the harm to the AONB would be

outweighed by the benefits of the development and whether the Proposed Development would be sustainable in terms of paragraph 11. Those were the main controversial issues of judgment, and they are reflected in the Committee resolution and also in the rejection of the first resolution. In assessing the adequacy of the Committee's reasons, the fact that members were correctly advised by officers as to the correct approach to adopt is fundamental to any fair analysis of the reasons given by members – see ***Tesco v Reigate and Banstead BC*** at [72-73], [83-84], [86]. Members were correctly advised, and their reasons were adequate.

55. As to *ground 3*, the Proposed Development was miles away from the Claimant's parish, and Sedlescombe, the parish that was physically affected by the development, was represented at the Committee meeting by the clerk to the parish council, who spoke. The word "relevant" in the provisions of the Constitution concerning speaking by parish councils indicates a connection between the parish council and the subject matter of the Committee meeting. Properly construed, paragraph 9.5 of the Constitution provides that unless all or part of a development proposal is within a parish council's area, a parish council would not be a relevant parish council. Not even relevant parish councils have the right to speak; they may request to speak, which the Chair of the Committee can choose to allow or refuse.

56. There is no general right for the public to speak at a planning committee meeting; see ***R (Spitalfields Historic Building Trust) v Tower Hamlets London Borough Council*** [2023] PTSR 31 ("***Spitalfields***") at [138]. No common law duty of fairness required that the Claimant be given an opportunity to speak at the Committee meeting on 14 March.

57. In any event, the statement from Francesca Nowne setting out issues which the Claimant would have raised if it had been given the opportunity, merely demonstrated that the Claimant had nothing to add. Following ***Moakes v Canterbury City Council*** [2024] EWHC 1272 (Admin) ("***Moakes***"), wrongful failure to allow interested persons to speak at a committee meeting does not automatically lead to quashing; there must be material prejudice.

DISCUSSION

The Claimant's case in relation to paragraph 11 (d) of the NPPF

Approach to paragraph 11 (d)

58. In ***Monkhill*** at first instance ([2020] PTSR 416), Holgate J set out the approach that should be taken to paragraph 11 (d) (i) and (ii) at [45]:

> "The following practical summary may assist practitioners in the field, so long as it is borne in mind that this does not detract from the more detailed analysis set out above:
> -It is, of course, necessary to apply section 38(6) in any event.
> -If the proposal accords with the policies of an up-to-date development plan taken as a whole, then unless other considerations indicate otherwise, planning permission should be granted without delay (paragraph 11(c) of the NPPF).
> -If the case does not fall within paragraph 11(c), the next step is to consider whether paragraph 11(d) applies. This requires examining whether there are no relevant development plan policies or whether the most important development plan policies for determining the application are out-of-date.

-If paragraph 11(d) does apply, then the next question is whether one or more 'footnote 6' [now footnote 7] policies are relevant to the determination of the application or appeal (limb (i)).
-If there are no relevant 'footnote' 6 policies so that limb (i) does not apply, the decision-taker should proceed to limb (ii) and determine the application by applying the tilted balance (and section 38(6)).
-If limb (i) does apply, the decision-taker must consider whether the application of the relevant 'footnote 6' policy (or policies) provides a clear reason to refuse permission for the development.
-If it does, then permission should be refused (subject to applying section 38(6))…Limb (ii) is irrelevant in this situation and must not be applied.
-If it does not, then the decision-taker should proceed to limb (ii) and determine the application by applying the tilted balance (and section 38(6)).”

59. Holgate J went on to decide that what is now paragraph 182 of the NPPF is (what is now) a footnote 7 policy, and so relevant to limb (i). An appeal against his decision was dismissed by the Court of Appeal, whose decision is reported at [2021] PTSR 1432.

The approach to AONB policy in paragraph 182

60. In ***Monkhill***, Holgate J said this about the first part of the then para 172, which was in essentially the same terms as paragraph 182 in the current NPPF:

“[51] Paragraph 172 points out that National Parks, the Broads and AONBs have 'the highest status of protection' in relation to the conservation and enhancement of landscapes and scenic beauty. Not surprisingly, therefore, paragraph 172 requires 'great weight' to be given to those matters. The clear and obvious implication is that if a proposal harms those objectives, great weight should be given to the decision-maker's assessment of the nature and degree of harm. The policy increases the weight to be given to that harm.

[52] Plainly, in a simple case where there would be harm to an AONB but no countervailing benefits, and therefore no balance to be struck between 'pros and cons', the effect of giving great weight to what might otherwise be assessed as a relatively modest degree of harm, might be sufficient as a matter of planning judgment to amount to a reason for refusal, when, absent that policy, that might not be the case. But where there are also countervailing benefits, it is self-evident that the issue for the decision-maker is whether those benefits outweigh the harm assessed, the significance of the latter being increased by the requirement to give 'great weight' to it. This connotes a simple planning balance which is so obvious that there is no interpretive or other legal requirement for it to be mentioned expressly in the policy. It is necessarily implicit in the *application* of the policy and a matter of planning judgement. The 'great weight' to be attached to the assessed harm to an AONB is capable of being outweighed by the benefits of a proposal, so as to overcome what would otherwise be a reason for refusal.”

61. In the Court of Appeal in ***Monkhill***, Sir Keith Lindblom SPT said:

“[29] In my view…. the policy in the first part of paragraph 172, which refers to the concept of 'great weight' being given to the conservation and enhancement of landscape and scenic beauty in an AONB, clearly envisages a balance being struck when it is applied in the making of a planning decision in accordance with the statutory regime...It

is… a balance between what can properly be seen, on the one hand, as a breach of, or conflict with, the policy and, on the other, any countervailing factors. To speak of a breach of the policy when the development would harm the AONB, or of a conflict with the policy in those circumstances, seems entirely realistic.

[30] …. The policy is not actually expressed in terms of an expectation that the decision will be in favour of the protection of the 'landscape and scenic beauty' of an AONB, or against harm to that interest. But that, in effect, is the real sense of it - though this, of course, is not the same thing as the proposition that no development will be permitted in an AONB. If the effects on the AONB would be slight, so that its highly protected status would not be significantly harmed, the expectation might - I emphasise 'might'- be overcome. Or it might be overcome if the effects of the development would be greater, but its benefits substantial. This will always depend on the exercise of planning judgement in the circumstances of the individual case.

[31] In ***Bayliss v Secretary of State for Communities and Local Government*** [2014] EWCA Civ 347 ["(**Bayliss**")] at [18] of his judgment (cited by Ouseley J in ***Franks v Secretary of State for Communities and Local Government*** [2015] EWHC 3690 (Admin) at [25]), Sir David Keene said this of the concept of 'great weight' in the equivalent policy in the first sentence of paragraph 115 of the original version of the NPPF, which was in almost exactly the same terms as the first sentence of the paragraph 172 of the July 2018 version;

'18. ..[That] national policy guidance, very brief in nature on this point, has to be interpreted in the light of the obvious point that the effect of a proposal on an AONB will itself vary: it will vary from case to case; it may be trivial, it may be substantial, it may be major. The decision maker is entitled to attach different weights to this factor depending upon the degree of harmful impact anticipated. Indeed, in my view it would be irrational to do otherwise. The adjective 'great' in the term 'great weight' therefore does not take one very far….'
[32] I agree….."

62. The most recent case in which the phrase "great weight" in what is now paragraph 182 was considered is ***Persimmon Homes (Thames Valley) Ltd v Worthing Borough Council*** [2023] PTSR 2029 ("***Persimmon***"). In that case the Court of Appeal dismissed an appeal against a decision by Lang J quashing an Inspector's decision allowing an appeal for development in a National Park, to which the then paragraph 176 - the first part of which was in essentially the same terms as what is now paragraph 182 - of the NPPF applied. The basis for the Court's decision was that the Inspector's reasons fell short of what was required in law.

63. Sir Keith Lindblom SPT, with whose judgment the other members of the Court agreed, said:

"[50] How then should the policy in paragraph 176 be understood? This question has already, in effect, been considered by this court, both in ***Bayliss***…and ***Monkhill***...

[51] In ***Bayliss*** the court was concerned with the predecessor policy in paragraph 115 of the original version of the NPPF, which referred to the concept of 'great weight' in very similar terms to the first sentence of paragraph 176 in the present version. The relevant

issue concerned the effect of development on an …AONB, not a National Park, but the 'great weight' concept applied to both - as it does in the present version of the policy. Sir David Keene said (in para 18 of his judgment) that there was no indication in the inspector's decision letter that he had failed to take account of the policy in paragraph 115. He was 'not required to use the words "great weight" as if it was some form of incantation.' This part of the policy 'has to be interpreted in the light of the obvious point that the effect of the proposal on an AONB will itself vary: it will vary from case to case; it may be trivial, it may be substantial, it may be major.' Sir David added that the 'decision-maker is entitled to attach different weights to this factor depending upon the degree of harmful impact anticipated'; that in his view 'it would be irrational to do otherwise'; and that [t]he adjective 'great' in the term 'great weight' therefore does not take one very far' (para 18). He did not suggest, however, that there might be a level of harm to an AONB or National Park, or to its setting, which might not even engage the application of the policy at all. Applying the policy in a particular case would require the decision maker to consider the appropriate degree of weight to give to the level of harm he found, conscious of the Government's policy that 'great weight' is to be given to the conservation and enhancement of landscape and scenic beauty in these areas with the highest status of protection.

[52] In ***Monkhill*** the court was not directly concerned with the meaning of the expression 'great weight'. It was concerned with the question of whether that part of the policy could provide a clear reason for the refusal of planning permission, within the scope of the policy for the presumption in favour of sustainable development in paragraph 11(d) of the NPPF. But the court recognised that, the 'real sense' of the policy was 'an expectation that the decision will be in favour of the protection of the "landscape and scenic beauty" of an AONB, or against harm to that interest.' Thus, 'if the effects on the [AONB] would be slight, so that its highly protected status would not be significantly harmed, the expectation… might be overcome', or 'it might be overcome if the effects of the development would be greater, but its benefits substantial'. This 'will always depend on the exercise of planning judgement in the circumstances of the individual case' (para 30). The court therefore agreed with what Sir David Keene had said in the passage I have quoted from his judgement in ***Bayliss*** (see para 32 of the leading judgement [Sir Keith was here referring to his own judgment]).

[55] the crucial question here… is not the meaning of the words 'great weight' in the first sentence of paragraph 176 of the NPPF, taken in their own context. It is whether, on a fair reading of the relevant parts of the inspector's decision letter, his assessment of the likely effects of this development on the setting of the National Park, in which he appears to have accepted that those effects would indeed be harmful, shows how he gave 'great weight' to the conservation and enhancement of the landscape and scenic beauty in the National Park, as the policy in paragraph 176 effectively requires. As was held in ***Bayliss,*** he was not obliged to use the words 'great weight' or even to refer to the paragraph 176 policy by name. But in my view his assessment did have to demonstrate that he had approached the question of harm to the National Park with the 'great weight' principle in mind."

64. The Court found that the Inspector's reasons in that case were defective:

"[62] We do not have to go as far as the judge and find that the inspector's conclusion in para 49 of the decision letter was, on its face, irrational. It is enough to conclude…that in this part of this decision-making the reasons he gave failed to meet the standard required.

> Even for an audience familiar with this 'principal important controversial [issue]'…..and with the parties' evidence and submissions about the effects of the development on the setting of the National Park, it is not clear how, or even if, the inspector has resolved that controversy. It is not clear whether he gave any weight, or conceivably no weight at all, to the harm he identified in para 47 of the decision letter. And it is not clear how that degree of weight can be reconciled with the whole policy in paragraph 176 of the NPPF, including the requirement to give 'great weight' to 'conserving and enhancing landscape and scenic beauty in National Parks.'
>
> [63] Clarity on those matters is not too much to expect of the reasons given on one of the main issues in the section 78 appeal. The level of harm identified by the inspector in para 47 of the decision letter - 'moderate adverse and not significant' - was not merely negligible. And it is not obvious how that finding of harm can be squared with the conclusion in the final sentence of para 49 that the setting of the National Park would not be 'materially affected.' Even if those two conclusions could be regarded as consistent with each other, it would still be unclear whether the harm identified by the inspector carried any weight in his planning balance, or, if it did, how that amount of weight could be seen as compatible with the 'great weight' principle in the Government's policy for National Parks. That is unclear in para 49 of the decision letter. It remains so in para 57, and in paras 82-92. I accept that the inspector did not have to voice the words 'great weight' but he did have to show how he had applied that part of the paragraph 176 policy, and how it had influenced the planning balance, if it did.
>
> [64] In my view, therefore, the council's complaint on this ground is justified. The inspector's reasons are defective. They leave a substantial doubt that that he has lawfully applied relevant national policy to one of the main issues in the section 78 appeal."

Assessment of the Claimant's case in relation to paragraph 11(d)

65. The Claimant contended that the Defendant failed to apply paragraph 11 (d) properly. It argued that the Defendant failed to apply limb (i), failing to identify what footnote 7 policies were relevant, and in any case failed to give great weight to the conservation and enhancement of the AONB. It also said that the Defendant had to apply limb (ii) because it had not concluded that limb (i) provided a clear reason for refusing permission, but that the Defendant had not properly considered limb (ii). The Claimant's case in relation to paragraph 11(d) generally and each of limbs (i) and (ii) was put on the basis of illegality (ground 1) and reasons (ground 2).

66. In the Second Resolution the Committee (and therefore the Defendant) did not distinguish between limbs (i) and (ii) and did not therefore go expressly through the sequential exercise set out by Holgate J in ***Monkhill***. However, as Mr Ronan agreed, if in substance the Committee properly applied paragraph 11(d) its decision would be lawful.

Defendant's decision in relation to AONB policy

67. I begin by considering the Defendant's decision in relation to AONB policy and the requirement to give great weight to the conservation and enhancement of the AONB. This is of course relevant to limb (i). However, it is also relevant to limb (ii), because limb (ii) requires weighing adverse impacts against benefits "against the policies in this Framework taken as a whole." Those policies include paragraph 182.

68. In relation to ground 1, the Claimant contended that the Defendant acted unlawfully by failing to apply the great weight principle. The Claimant relied on the lack of reference to great weight in the Second Resolution, added that the Committee members were not advised in the OR that they had to give great weight to conserving and enhancing the AONB's landscape and scenic beauty, and contended that the lack of any reference at the four-hour long Committee meeting to attaching great weight to conserving and enhancing the AONB further showed that the Committee had not adopted the correct approach.

69. To succeed on ground 1 in relation to the Committee's treatment of the AONB issue, I agree with the Defendant and IP that the burden is on the Claimant to show illegality. In my view, the Claimant has not discharged that burden.

70. Although there is no reference to paragraph 182 or the great weight principle in the Second Resolution, the OR can be referred to in order to understand the basis on which the Committee determined the application. As was said in ***Tesco v Reigate and Banstead BC*** at [83], if members were correctly advised by officers as to the correct approach to adopt, that is fundamental to any fair analysis of the reasons given by the members.

71. The OR referred extensively to paragraph 182 which contains the great weight principle, at paragraphs 1.2, 1.5, 8.2.41, 9.3, 9.7 and in the third suggested reason for refusal. The Committee was reminded of the terms of paragraph 11 (d) of the NPPF in paragraph 9.2 of the OR, and the OR said at paragraphs 1.3 and 9.4 that "in line with paragraph 11 d) i) of the National Planning Policy Framework, the identified harm to the AONB provides a clear reason for refusing the development proposed."

72. As Sullivan J said in ***Fabre*** at 1120:

> "Whilst planning officers' reports should not be equated with inspectors' decision letters, it is well established that, in construing the latter, it has to be remembered that they are addressed to the parties who will be well aware of the issues that have been raised in the appeal. They are thus addressed to a knowledgeable readership and the adequacy of their reasoning must be considered against that background. That approach applies with particular force to a planning officer's report to a committee. Its purpose is not to decide the issue, but to inform the members of the relevant considerations relating to the application. It is not addressed to the world at large but to council members who, by virtue of that membership, may be expected to have substantial local and background knowledge. There would be no point in a planning officer's report setting out in great detail background material, for example, in respect of local topography, development planning policies or matters of planning history if the members were only too familiar with that material."

73. Mr Ronan did not dispute Mr Green's assertion that the Committee was well aware of AONB policy because over 80% of the district was within AONB. In those circumstances, there was in my judgment no need for the OR to set out the content of paragraph 182; it was sufficient to refer to it, which the OR did repeatedly.

74. Furthermore, at paragraph 5.6, the OR stated that pursuant to section 85(A1) of the Countryside and Rights of Way Act 2000 ("the 2000 Act"), in exercising or performing

functions in relation to land in an AONB, the Defendant must seek to further the purpose of conserving and enhancing the natural beauty of the AONB. Section 85(A1) does not expressly state that great weight should be given to conservation and enhancement of the AONB. However, the duty under section 85(1A) to seek to further the purpose of conserving and enhancing the natural beauty of the AONB applies to the consideration of every planning application. If the section 85(1A) duty is performed in relation to a planning application, the authority will inevitably give great weight to conservation and enhancement of the AONB's landscape and scenic beauty. Otherwise, I cannot see how the duty could be said to have been performed in relation to that application.

75. At the Committee meeting, the Committee was given further advice by officers and by Mr Green. Notably, in his presentation to the Committee, the planning officer Mr Matthew Worsley said that "in line with paragraph 11 (D) (1) of the National Planning Policy Framework, the identified harm to the AONB provides a clear reason for refusing the development proposed", echoing the statement to that effect in the OR at paragraphs 1.3 and 9.4 (transcript page 13). Later in the meeting, Mr Green read paragraph 11 (d) to the Committee (transcript page 60).

76. The fact that the Committee was advised about paragraph 182, in circumstances where members were familiar with the content of paragraph 182, and also about section 85(1A) of the 2000 Act, is a highly relevant indicator that the Committee did give great weight to conservation and enhancement of the AONB in its assessment.

77. A further indicator is the fact that the Committee had the pre-application advice dated 17 March 2022 from the planning officer of the High Weald AONB Joint Advisory Committee, with its appendix reminding the Committee of the great weight principle. The Committee was reminded of this letter in paragraph 8.2.42 of the OR and during the Committee meeting.

78. Mr Ronan relied on the lack of reference to the great weight principle during the Committee's discussion. In ***Mid-Counties Co-Operative*** at [86] - [88] Singh J, citing the relevant authorities, warned of the dangers of relying on the remarks made by Committee members at their meeting in order to discern the reasoning of the Committee, therefore caution is necessary. However, in any case, the Committee discussion must be considered in the light of the OR and the advice the Committee was given at the meeting. In that light, I do not think the evidence suggests that the Committee failed to give the appropriate weight to conservation and enhancement of the AONB. As Mr Ronan said, there was lengthy discussion about whether paragraph 84 (e) of the NPPF was satisfied, but the Committee did not resolve to grant permission on the basis of satisfaction of that paragraph of the NPPF, and I see nothing in the transcript which indicates that it failed to take a lawful approach to paragraph 11 (d) generally and AONB policy in particular. If anything, the Second Resolution indicates that it did, in fact, apply the great weight principle, as it is clear from that resolution that the main issue so far as the Committee was concerned was the impact on the AONB.

79. Overall, the evidence does not establish that the Defendant erred in relation to AONB policy; in my view, the reverse is the case. Further, though the Committee did not expressly address the question raised by paragraph 11 (d) (i) of whether AONB policy as set out in paragraph 182 provided a clear reason for refusal, it did in fact decide that AONB policy did not provide a clear reason for refusal.

80. Having regard to the foregoing, in my judgment the Claimant has not succeeded on ground 1 in relation to the Defendant's consideration of AONB policy, or limb (i), or limb (ii) to the extent that AONB policy was relevant to that limb.

81. I turn to ground 2, reasons, and consider whether the Committee's reasons were defective because of how it dealt with the AONB. When assessing the adequacy of the reasons given by a planning committee for granting planning permission contrary to officer recommendation, it is appropriate to have regard to the advice the committee received from officers, because the officers' advice is an important part of the context. As Lord Carnwath said in ***CPRE*** at [42], where a committee disagrees with the officers' report it may normally be enough for the committee's statement of reasons to set out where the committee differs from the officers. The statement in ***Tesco v Reigate and Banstead BC*** at [83] that if members were correctly advised by officers as to the correct approach to adopt, that is fundamental to any fair analysis of the reasons given by members, is also relevant in this context.

82. Members were correctly advised by officers, in my judgment. As I have said above, they were reminded in the OR of paragraphs 11 (d) and 182 (with which it is accepted they were familiar and which contains the great weight principle) and referred to section 85(A1) of the 2000 Act, as well as being reminded of paragraph 11 (d) by the case officer and Mr Green during their meeting. In those circumstances, their reasons were in my view lawful. The Committee disagreed with the officers, considered that planning permission should be granted despite the harm to the AONB and said why. They considered that the Proposed Development was an innovative design, not an isolated development, and they therefore considered it a sustainable development under paragraph 11 (d).

83. Mr Ronan said that the Claimant did not accept that the nature and extent of the harm to the AONB that was identified by the Committee was necessarily the same as that set out in the OR, particularly in the light of the opening words of the Second Resolution ("Notwithstanding officer advice") and the use of the word "potential." However, in my judgment the words "Notwithstanding officer advice" are simply the introduction to the Committee's resolution to reject the officers' recommendation to refuse permission and use of the word "potential" on its own does not suggest that the Committee's view of the harm to the AONB differed from that of the officers. In my view the word "potential" simply refers to the harm that would eventuate from construction of the development.

84. In my judgment there is nothing to suggest that the Committee disagreed with the officers about the harm to the AONB, any other adverse impacts, or the benefits of the Proposed Development - except in relation to the points specified in the Second Resolution. In the words of Lord Carnwath in ***CPRE***, it was enough for the Committee to say where they differed from the officers. They were not required to say more than they did and to require more of them would be to require reasons for reasons.

85. I am conscious of the guidance given by Sir Keith Lindblom in ***Persimmon*** at [55] that where paragraph 182 is relevant the decision-maker must demonstrate that they approached the question of harm to the AONB with the "great weight" principle in mind. However, in the same paragraph of his judgment Sir Keith said that the Inspector - the decision-maker in that case - was not obliged to use the words "great weight" or even to refer to (what is now) paragraph 182. This is also apparent from ***Bayliss***, where the Court of Appeal upheld the Inspector's decision in that case despite the fact that the

Inspector had not referred to the "great weight" principle (see the judgment in ***Bayliss*** at [18]-[20]).

86. Further, in the instant case the decision-maker was a planning committee, not an Inspector. In such cases the decision is to be seen in the context of the advice given by officers. I have said that in the present case the Committee was properly advised by the planning officers (including being reminded of paragraph 182 of the NPPF which contains the great weight principle), and there is no evidence that the Committee deviated from that advice in its decision, save to the extent indicated in the Second Resolution.

87. In reaching my conclusion on the reasons challenge I have also considered ***Cross***. That case concerned a challenge to the grant of planning permission for an agricultural dwelling in the Cornwall AONB, contrary to officer recommendation. One of the grounds of challenge was defective reasoning. The officers recommended refusal because the proposal would harm the AONB and its social and economic benefits would not outweigh that harm. The planning committee resolved to grant permission for the following reasons as proposed by Cllr Parsons:

"Policy seven. The development of new homes in the open countryside will only be permitted where there are special circumstances, full time agriculture and other rural occupation workers where there is up to date evidence of an essential need of the business for the occupier to live in that specific location as supported by the County land agent."

88. The minutes recorded the reasons as follows:

"the reasons given by the Proposer for wishing to approve the application were that the proposed development accords with Policy 7 of [the Local Plan], where the agricultural justification and need for a workers dwelling is considered to outweigh the harm to the landscape and scenic beauty of the Cornwall [AONB]."

89. Tipples J held ([85]) that the reasons for the decision to grant permission were those identified by Cllr Parsons, and that the minutes were inaccurate. She went on to decide ([91]-[93]) that the reasons provided by Cllr Parsons did not articulate any reasons why the committee departed from the officer recommendation. Tipples J also said at [94] that even if the resolution passed at the committee meeting had been (contrary to her conclusion) accurately set out in the minutes, her conclusion would be the same:

"This is because [the statement in the minutes] ..is simply a conclusion and does not articulate any planning reasons which led to that conclusion. There is no explanation which identifies the reasons why the proposed development justified damaging the AONB, an area which enjoys the highest level of protection….."

90. I do not think my conclusion in this case is inconsistent with ***Cross***. To begin with, based on what Tipples J decided the committee had actually resolved, no reasons at all were given by the committee in that case. Secondly, what she said at [94] about the situation if the committee's reasons had been as per the minutes was obiter, because she had decided that the minutes were inaccurate. Thirdly and in any event, in the present case, the Committee did articulate planning reasons which justified damaging the AONB, namely

that it was not an isolated development, it was of an innovative design, and that it was sustainable.

91. For the reasons set out above, grounds 1 and 2 cannot succeed in relation to the Defendant's consideration of the AONB or limb (i) of paragraph 11(d) of the NPPF, or limb (ii) to the extent that AONB policy was relevant to that limb.

Claimant's other points in relation to limb (ii)

92. I do not think the Claimant's other points in relation to limb (ii) add anything. The Committee had been reminded of both limbs of paragraph 11(d) in the OR (paragraph 9.2) and again by paragraph 11 (d) being read out at the meeting. As Mr Ronan recognized, the Committee did consider whether the adverse impacts of granting the planning permission would outweigh the benefits. The adverse impacts identified in the OR included not just harm to the AONB but also other matters, including conflict with the development plan (considered further below) and unsustainable location (section 8.4 of the OR).
93. As I have said, there is no evidence that the Committee disagreed with what the OR said about these adverse impacts. It simply took the view that for the reasons it set out in the Second Resolution, the Proposed Development was sustainable within paragraph 11 (d) and should be permitted. I cannot see any unlawfulness - the subject of ground 1- in what it did.

94. Further, in relation to ground 2, a reasons challenge in relation to limb (ii) cannot succeed. As Mr Ronan acknowledged, it is plain from the Second Resolution that the Committee did indeed balance benefits and harms. Given that there is no evidence that it disagreed with what the OR said about the adverse impacts of the Proposed Development, there was no need for it to say any more about those adverse impacts than it did. The Committee concluded that the benefits of the development - as set out in the Second Resolution - outweighed the harm. To require it to give more detailed reasons for reaching that conclusion would amount to requiring it to give "reasons for reasons."

Overall

95. Overall, the Claimant's challenge under grounds 1 and 2 based on paragraph 11(d) of the NPPF fails. Though the Committee did not expressly undertake a sequential assessment by starting with limb (i) and then moving to limb (ii) if necessary, it did in substance carry out the required exercise. While applying AONB policy lawfully, the Committee clearly did not consider that the harm to the AONB provided a clear reason for refusing the Proposed Development. It also decided that it was not the case that the adverse impacts of granting permission would outweigh the benefits. Therefore, it was not satisfied that either limb (i) or (ii) of paragraph 11(d) applied so as to prevent the grant of planning permission. The Committee's approach was lawful and, furthermore, sufficiently reasoned.

The Claimant's case in relation to section 38(6) of the PCPA 2004

96. I turn to the Claimant's case in relation to section 38(6) of the PCPA 2004. The Claimant framed this part of its case as a reasons challenge under ground 2.

97. The Committee's attention was drawn to section 38(6), at paragraph 8.2.1 of the OR, where section 38(6) was set out in full. Mr Ronan referred to the duty to determine whether the proposal accords with the development plan as a whole as set out in ***BDW Trading*** at [21]. His contention was that the Defendant had not performed the duty under section 38(6), because the Committee did not form its own view as to whether the Proposed Development accorded with the development plan as whole. In the OR, the officers set out their strong view that the Proposed Development did not so accord, but the Committee disagreed with the officers' recommendation, and so they had to determine for themselves whether or not the Proposed Development accorded with the plan.

98. It is true that the Committee did not state whether it considered that Proposed Development accorded with the development plan taken as a whole. However, as Mr Green pointed out, not only was the OR written on the basis that the Proposed Development did *not* accord with the development plan, but also no one ever suggested that it *did*. It was plain that the Proposed Development did not accord with the development plan, as set out in the OR at paragraphs 1.5, 8.2.3 - 8.2.5 and 9.3 - 9.7. It did not accord with the general strategic policies about development in the countryside at RA2 and RA3 of the Core Strategy. Also, in relation to the AONB specifically, the relevant policy, DEN2 of the Development and Site Allocations Local Plan provides that development shall maintain and enhance the AONB. The Committee clearly did not consider that the Proposed Development maintained and enhanced the AONB, because it is apparent from the Second Resolution that it accepted there would be harm. Even if the Committee thought the harm that would be caused to the AONB would be less than that set out in the OR (for which, as I say, there is no evidence) it was accepted by Mr Ronan that the Committee did consider that harm would be caused. It was therefore inevitable that the Proposed Development would be found not to comply with the development plan. Mr Ronan did not suggest that, having found that the Proposed Development would harm the AONB, the Committee could have found that the Proposed Development complied with the development plan, even on the basis of its positive view of the scheme. In my judgment he was right not to make that suggestion.
99. In those circumstances, it was pointless to require the Committee to make a separate determination as to compliance with the development plan or to give reasons for the view it formed as to the Proposed Development's compliance with the development plan. There is no evidence that the Committee disagreed with the view in the OR that the Proposed Development conflicted with the development plan, and, indeed, it was not suggested how it *could* have disagreed with that view. Also, it did not have to say expressly that it had applied section 38(6). That provision had been set out in the OR and it was acceptable for the Committee's reasons to be limited to the points where it differed from the officers' advice.

100. It follows from the above that this aspect of the Claimant's case fails.

Ground 3

101. It was common ground that there was no statutory entitlement or general right for the Claimant to be permitted to speak at the Committee meeting: see ***Spitalfields*** at [138]. However, circumstances of a particular application can give rise to a common law duty of fairness to an objector, which requires the authority to allow the objector to speak at a

committee meeting; see ***R v Great Yarmouth Borough Council ex p. Botton Brothers*** [1988] 56 P&CR 99 ("***Great Yarmouth***"). In ***Great Yarmouth***, traders who owned amusement arcades on Marine Parade in Great Yarmouth objected to a planning application for premises on Marine Parade to be used as amusement arcades. The planning committee refused to hear the objecting traders and resolved to grant planning permission. Otton J held that fairness required that the traders should have been allowed to make representations, given the "unique combination of circumstances", which included a recent appeal decision dismissing an appeal by one of the traders against the authority's refusal of permission for a new amusement arcade on Marine Parade, the fact that no notices or publicity had been given to the application and the fact that the committee was evenly divided on the issue.

102. I do not think a common law duty of fairness arose in this case so as to require the Committee to hear the Claimant. The fact that the Claimant objected to the development and considered it would set a precedent was not sufficient. After all, the Claimant had already expressed its concerns in a written objection which was brought to the Committee's attention (see below). Nor did the Claimant's previous successful challenge to the first planning permission give rise to a duty to hear the Claimant in relation to the re-determination. On 14 March 2024 the Committee took an entirely fresh decision. Where the development did not physically affect the Claimant's parish, did not have any planning consequences for the Claimant's parish over and above those applying to other parishes, and where the Claimant had already made written representations, fairness did not demand that the Claimant be given an opportunity to speak.

103. The Claimant says that the Defendant erred in law in refusing to register the Claimant to speak at the Committee meeting on the ground that the Claimant was not a "relevant parish council" within the meaning of the Defendant's Constitution. Although the relevant provisions of the Constitution are not well worded, I think the Defendant is correct to say that "relevant" must mean that the application site is wholly or partly within the area of a parish council. Otherwise, I cannot see any point in paragraph 9.5(d), which provides that where the application relates to a development on the parish boundary, only one speaker will be permitted. Accordingly, the Committee Chairman was entitled to deal with the matter as he did, stating immediately after Cllr Kirby Green's presentation (as to which see below) that "I wouldn't want [the Claimant] to think they are irrelevant. They were just not decided to be *the* relevant Council to address this meeting."

104. In my judgment, therefore, there was no common law duty of fairness which required the Defendant to hear the Claimant, and the Defendant did not misinterpret its Constitution when stating that the Claimant was not a relevant parish council within paragraph 9.5.

105. In any case, even if there had been unlawfulness, there was no prejudice to the Claimant and I would apply section 31(2A) of the Senior Courts Act 1981, because even had the Claimant been heard, the outcome would highly likely have been the same. In considering the issues of prejudice and section 31 (2A) I note what Morris J said in ***Spitalfields*** at [138]:

"(3) It is a question of fact whether inability to attend a planning committee meeting results in any prejudice to the person excluded..

(4) Relevant factors might include whether the person exclude has already made representations, whether orally at a previous meeting or in writing; whether he has expressed a wish to speak; whether has been provided with an update following an earlier meeting; and whether the person excluded could have added to points already made by others..
(5) However in a particular case, the person excluded might have lost the opportunity to respond to the oral presentation by officers and to persuade members to a view which differed from that of the officers..”

106. As expressed in Mr Ronan’s skeleton argument at paragraph 101, the witness statement of Francesca Nowne explains “what the Claimant was prevented from saying”:

a. The Claimant was prevented from making representations on the applicability of paragraph 84 (e) of the NPPF. The Claimant considered the Defendant was wrong to suggest that a “live work unit” was a dwelling within the meaning of paragraph 84.

b. The Claimant was prevented from explaining its concerns that the grant of planning permission for the Proposed Development would set a precedent for development elsewhere in the district.

c. (in the words of Mr Ronan’s skeleton argument) the Claimant was prevented from explaining why the Defendant was wrong to conclude that the Constitution did not prevent it from speaking and that the Chairman had a discretion to allow the Claimant to participate.

107. Ms Nowne says at paragraph 2 of her witness statement that these are “some of the issues which the Claimant may have raised”, but there was no suggestion from the Claimant, even at the hearing, that there were any others. I conclude that even if there was unlawfulness there was no prejudice to the Claimant and that relief would be refused under section 31(2A), for the following reasons.

108. To begin with, the Claimant’s substantive concerns about the application of paragraph 84 (e) and precedent were set out in its written objections, which were summarised for the Committee in section 6.11 of the OR.

109. Secondly, these concerns were articulated at the meeting by Cllr Kirby Green, who in her presentation responded to both the applicant and the officers (with whose opposition to the Proposed Development Cllr Kirby Green and the Claimant agreed). I was told that although her ward did not cover the Claimant’s area, she was a resident of the parish. She began by saying “I wasn’t planning on speaking today. However, I am, because I know my parish had applied to speak and they were deemed not relevant…” She then made detailed representations, stating that paragraph 84 (e) does not cover live - work units and expanding on concerns about precedent. In essence, she spoke on behalf of the Claimant and voiced its concerns.

110. Thirdly, paragraph 84 (e) was not relevant to the decision taken by the Committee, because although the failed First Resolution was based on paragraph 84 (e), the Second Resolution was not, being instead based on the balance between harm to the AONB and benefits. In any event, it appears from the IP’s witness statement at paragraph 15 that before the meeting at which the application was determined, a letter dated 8 March 2024

from the Claimant's solicitor was circulated to the Committee members, which set out Claimant's contentions about the application of paragraph 84 (e) to live - work units.

111. Fourthly, the concern about precedent was repeatedly raised during the Committee meeting by several speakers, so Committee members were well aware of the issue.

112. Fifthly, the parties had corresponded on the Claimant's desire to speak and the Claimant had had the opportunity to make whatever procedural points it wished to make. At the meeting, the Defendant was entitled to treat the matter as closed. However, even if the Chairman of the meeting had a discretion to allow anyone to speak at the meeting and should have exercised it in favour of the Defendant, it is clear from the foregoing points that the Claimant's concerns about the Proposed Development were fairly and squarely before the Committee, and in those circumstances I cannot see that it would have made any difference to the outcome if the Claimant had been allowed to speak. Even if the Defendant had erred in law, therefore, this would be a case like ***Moakes***, where there was no prejudice and relief was refused under section 31 (2A) of the Senior Courts Act 1981.

CONCLUSION

113. For the reasons set out above none of the grounds of challenge succeeds and therefore this claim must be dismissed.