Neutral Citation Number: [2013] EWHC 3684 (Admin)

Case No: CO/6597/2013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT IN BRISTOL

Bristol Civil Justice Centre,
2 Redcliff Street, Bristol, BS1 6GR

Date: 27/11/2013

Before:

MR JUSTICE HICKINBOTTOM

- -

Between:

THE QUEEN on the application of
MEVAGISSEY PARISH COUNCIL — **Claimant**

- and -

CORNWALL COUNCIL — **Defendant**

- and -

MEVAGISSEY BAY VIEW LLP — **Interested Party**

- -
- -

Alex Goodman (instructed under public access provisions) for the **Claimant**
The Defendant not appearing or being represented
Harriet Townsend (instructed by **Stephens Scown LLP**) for the **Interested Party**

Hearing date: 21 November 2013

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Approved Judgment

Mr Justice Hickinbottom:

Introduction

1. In this claim, the Claimant seeks to quash the grant of planning permission by the Defendant Council ("the Council") on 21 March 2013 for a residential development at a site consisting of 1.2 hectares in two undeveloped fields, at School Hill, Mevagissey ("the Site").

2. The application for planning permission was made in April 2012 by the Interested Party ("the Developer"). The proposed development comprised 31 dwellings, including 21 affordable homes (i.e. accommodation for households whose needs are not met by the market), with associated landscaping, roads and services. It is uncontroversial that there was a clearly identified need for affordable accommodation in Mevagissey, with 100 people on the Homechoice register and a recent report indicating that the provision of 55 affordable homes was required in the parish. Behind the development was an intention that the ten open market homes would subsidise the affordable homes, so that they would not require any public funding.

3. However, the whole of the village of Mevagissey, including the Site, falls within the South Coast Area of Outstanding Natural Beauty ("the AONB"). The Site lies only 20m from the South West Coastal Path, and its specific location is in an area described as one of "spectacular coastline scenery and far-reaching views", and elsewhere as a "dramatic unspoilt coastline".

4. The planning application of course required the Council to weigh all material considerations; but, in particular, it required the Council to consider, in the light of the relevant policies, the tension between the local need for affordable housing and the impact of the proposal on this location within the AONB. One primary ground of challenge is that the Council's approach to this task was not in accordance with the relevant policies and was therefore unlawful.

The Relevant Planning Policies

5. Under the relevant statutory provisions (notably Part IV of the Countryside and Rights of Way Act 2000), the sole criterion for designation of an AONB is that the outstanding beauty of the area makes it desirable that particular protections should apply to it. Under sections 84(4) and 85(1) of the 2000 Act, a planning authority must take steps to accomplish the purpose of conserving and enhancing the natural beauty of an AONB; and must have regard to that purpose in exercising any function in relation to, or affecting land in, an AONB.

6. Given those statutory provisions, the specific policy guidance in the National Planning Policy Framework ("the NPPF") that deals with the proper approach to development within an AONB is unsurprising. It is at paragraphs 115-116, and reads as follows:

> "115. Great weight should be given to conserving landscape and scenic beauty in… [AONBs], which have the highest status of protection in relation to landscape and scenic beauty….

> 116. Planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of:
>
> - the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
>
> - the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and
>
> - any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated."

7. Thus, amongst material considerations, national policy gives the conservation of landscape and scenic beauty in an AONB a particular enhanced status. It requires an application for planning permission for a major development within an AONB to be refused, unless (i) there are exceptional circumstances ("exceptional" in this context connoting rarity); and (ii) it is demonstrated that, despite giving great weight to conserving the landscape and scenic beauty in the AONB, the development is in the public interest. As well as any detrimental effect of the development on the landscape, this national policy requires the planning decision-maker to assess, and take into consideration, the need for the development and the scope for meeting the assessed need in some other way.

8. Turning to local guidance, the development plan for Mevagissey includes saved Policy 2 of the Cornwall Structure Plan, which is consistent with that national guidance. It provides that:

> "The conservation and enhancement of sites, areas, or interests, of recognised international and national importance for their landscape, nature conservation, archaeological or historic importance… should be given priority in the consideration of development proposals."

Paragraph 32 makes clear that AONBs fall within the definition of areas of recognised national or international significance.

9. Similarly, Policy 13 of the Restormel Local Plan, which is the relevant local plan for Mevagissey and also part of the development plan, provides:

> "Within the [AONB]… priority will be given to the preservation and enhancement of natural beauty. Development will not be permitted that would conflict with this objective."

10. Finally, Policy PD7 of the Cornwall AONB Management Plan 2011-16 (adopted by the Council in February 2011) states:

> "Particular care will be taken to ensure that no development is permitted in or outside the AONB which would damage its natural beauty, character and social qualities or otherwise prejudice the achievement of the AONB purposes."

11. The NPPF deals with affordable housing in rural areas such as Mevagissey in paragraph 54:

> "In rural areas, exercising the duty to cooperate with neighbouring authorities, local planning authorities should be responsive to local circumstances and plan housing development to reflect local needs, particularly for affordable housing, including through rural exception sites where appropriate. Local planning authorities should in particular consider whether allowing some market housing would facilitate the provision of significant additional affordable housing to meet local needs".

12. In the relevant local guidance, that is picked up in saved Policy 9 in the Cornwall Structure Plan:

> "Local plans should set targets for affordable housing….
>
> Local plans should set out the circumstances where affordable housing will be provided as an "exception" to normal policy in rural areas, providing the basis of resources to be targeted at areas of greatest need in locations easily accessible to a range of services and facilities…".

The accompanying notes, at paragraph 65, expand on that policy:

> "… Policy 9 allows for both the provision of affordable housing as part of development on planned sites and 'exceptions' approach in villages.
>
> …
>
> Currently, the planning system is specifically providing for affordable housing in two main ways. First, through 'planned' sites, where a particular proportion of housing is to be 'affordable'. The proportion appropriate and the type of housing is determined through the local planning process. The second method has become known as the 'exceptions' approach. This is specifically aimed at rural communities, where sites within and on the edge of villages can, in certain circumstances, be granted planning permission for affordable housing on sites where housing for the open market would not be allowed."

13. Policy AH5 of the draft Council development plan document, Affordable Housing (September 2010), states that

> "Planning permission will be granted for exception sites well-related to existing villages where the development will provide affordable homes that meet a clearly identified need for affordable housing in that specific community."

It goes on to say that the inclusion of market housing will not normally be supported, but the Council may be willing to negotiate a departure from existing policy on any such scheme, which satisfies a number of criteria including (i) the development meets a local need, and (ii) the inclusion of market housing is essential for the successful delivery of the development. The notes state:

> "8.6.2 The justification for development on such sites can only be made on the basis of a pressing local need for affordable housing which cannot easily and expediently be met in other ways….
>
> 8.6.3 Rural exceptions should normally be limited to 100% affordable housing restricted for local needs in perpetuity. [Planning Policy Statement 3] clarifies that exceptions proposals may only include affordable housing. As such, any proposals for exception site development that include cross-subsidy from open market sales would represent a departure from national policy. However, the possibility of departure proposals exists and there may be circumstances within which the use of a departures approach may be justified."
>
> 8.6.4 The Council will, therefore, consider proposals to include an element of market housing…."

Planning Policy Statement 3 has been replaced by the NPPF, but this remains as local guidance, albeit in draft.

14. Finally, Guiding Principle GP9.3 of the Cornwall AONB Management Plan 2011-16 is as follows:

> "Support provision of affordable housing in settlements such as… Mevagissey… provided that there is access to local services, identified local need and that by location and design this fully respects historic settlement pattern and local vernacular including locally characteristic materials and that this conserves and enhances natural beauty."

The Planning Application

15. As I have indicated, the planning application was submitted in April 2012. No Environmental Impact Assessment ("EIA") was lodged; but the application was accompanied by various other documents, including a Planning Assessment, a Land and Visual Impact Assessment, and an Alternative Site Assessment ("ASA").

16. The ASA considered six sites (including the Site) which were identified as "the only potential development sites to accommodate housing development within the village

with short-term delivery prospects and as agreed with [the] previous case officer during the pre-application stage". All of the sites fell within the AONB. None was in an area of planned development. The Site achieved the highest (i.e. best) overall score, the fact that it scored lowest on landscape (i.e. it was assessed as having the greatest adverse impact on the AONB, marked as a "major to moderate adverse constraint") being outweighed by higher scores in respect of other planning considerations including accessibility and achievability or deliverability. It is to be noted that, on the scoring matrix used, harm to visual amenity (Landscape") accounted for just 5 of the aggregate 75 points: the Site achieved the lowest possible score of 1. The ASA concluded:

> "In conclusion, the [ASA] clearly shows that the application site provides the most acceptable exception site in Mevagissey to meet the identified need for affordable housing provision through a cross-subsidy development…".

17. The planning application excited considerable local feeling, both for and against the proposed development. During the period of consultation, about 20 letters and a petition with 85 signatures in support were received, together with about 200 letters of objection. The application was supported by the Cornwall Affordable Housing Unit; but opposed by the Claimant, Natural England, the Cornwall Wildlife Trust and the Cornwall AONB Unit, largely on the grounds of the adverse impact on the AONB.

18. The application was considered first by the Council's Senior Development Officer, Ms Claire Broughton, who prepared a report for the Council's Central Sub-Area Planning Committee ("the Planning Committee") which was charged with determining the application on behalf of the Council.

19. The Claimant aims no criticism at that 47-page report. In it, the officer summarised the consultation responses, and set out the relevant policies. There can be no real doubt that she accepted that there was a clearly identified need for affordable housing in the parish (see, e.g. paragraphs 67, 77 and 124); and that this could not be accommodated within the development land identified in the local plan, i.e. it could only be satisfied by sites within the AONB on an exceptions basis (see, e.g., paragraph 98). She noted that the proposed development would be a departure from the development plan, because cross-subsidising market housing was included in it; but did not apparently consider this point of any great moment because "without external subsidy, 100% is rarely viable" (paragraph 69).

20. The officer specifically identified that one of the main issues was the location of the Site (paragraph 86), and, in that context, she set out paragraphs 115 and 116 of the NPPF and relevant local guidance (paragraphs 87 and following). She pointed out that, although most of Mevagissey was in the AONB, the Site was located in a particularly prominent position with a section of undeveloped spectacular coastal scenery, and she gave examples of the impact the proposed development would have (paragraph 92-7). She dealt with the ASA thus (paragraph 98):

> "The applicants have submitted an [ASA] which considers 6 sites around Mevagissey and concludes that this application site provides the most acceptable exception site. However, it is considered that the assessment does not attach appropriate

> weight to the significant adverse impact the development would have on the protected landscape, and it is considered that there are alternative locations which would have significantly less impact on the AONB."

Having accepted the need for affordable housing in the parish, this reasoning was, as we shall see, crucial to the officer's analysis and to her ultimate conclusion to recommend refusal.

21. On landscape, the officer therefore concluded (paragraph 100):

> "It is therefore considered that the proposal in this prominent position on the coastline fails to conserve the landscape and scenic beauty of the AONB and South West Coastal Path, contrary to paragraphs 115 and 116 of the [NPPF] and saved Policy 2 of the Cornwall Structure Plan. The proposal also contradicts policy PD8 and guiding principle 9.3 contained in the AONB Management Plan 2011-2016 as it does not address landscape sensitivity or capacity or is compatible with the distinctive character of the location described by the landscape character assessment."

22. Her overall conclusion was drafted in terms specifically focused on the policy requirements of paragraphs 115-116 of the NPPF (paragraphs 123-5);

> "123. The proposed development is a major application in a designated [AONB]. The NPPF states that planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest.
>
> 124. Whilst it is noted that the proposal would provide affordable housing to meet an identified need in Mevagissey, the circumstances are not considered to be exceptional as it is considered that there are alterative deliverable sites which would meet this need with a less harmful impact on the AONB. Therefore the selection and development of this site is not considered to be in the public interest.
>
> 125. It is therefore concluded that the adverse impact of this proposal in this prominent undeveloped coastal location in the AONB outweighs the provision of affordable housing and the application should therefore be refused."

23. Therefore, given the identified need for affordable housing and the Site's location in the AONB, in the context of paragraphs 115-116 of the NPPF, the officer clearly addressed the right questions, namely (i) were there exceptional circumstances, and (ii) giving great weight to conserving the landscape and scenic beauty in the AONB, had it is been demonstrated that the development would be in the public interest. She answered both questions in the negative, and made clear her reason for doing so, namely "as it is considered that there are alterative deliverable sites which would meet

this need with a less harmful impact on the AONB", which harks back to paragraph 98 of her report (see paragraph 20 above).

24. Her recommendation, immediately following, was in these terms (paragraph 126):

> "Refuse for the following reasons:
>
> The proposed development by reason of its scale and location within a prominent sensitive coastal landscape would have an unacceptable impact on the landscape and scenic beauty of the [AONB]. The proposed development is thereby considered to be in conflict with paragraphs 115 and 166 of the [NPPF], saved Policy 2 of the Cornwall Structure Plan and the Cornwall AONB Management Plan 2011-2016 policy PD8 and guiding principle GP9.3."

25. As I have said, no party has sought to criticise the officer's report; and, if the decision-makers in the Planning Committee had followed her recommendation on the basis of the analysis of her report, then no one suggests that they would have erred in law. However, of course, the Planning Committee had to make its own judgment on the application.

26. The application moved to the Planning Committee at its meeting on 3 October 2012. The officer attended, and outlined the application and recommendation, including (the minutes record) "the key issues". She also set out the "key issues" on one sheet, apparently a powerpoint slide, thus:

> "**Key Issues**
>
> - Impact of the proposal on coastal location of the [AONB]
> - A cross-subsidy scheme providing 21 affordable dwellings and 10 open market houses
>
> Conclusion
>
> - Adverse impact on prominent undeveloped coastal location in the AONB outweighs the provision of affordable housing
>
> Recommendation
>
> - Refuse"

27. A number of supporters and objectors are recorded in the minutes as having spoken. The councillor within whose division the Site fell spoke against the proposal, saying, amongst other things, that the development would "irreversibly spoil the area", and there were other potentially suitable sites within Mevagissey the development of which would have less impact on the AONB, a point which reflected the officer's view. She also said that the Parish Council was actively addressing the need for affordable housing, with 14 such dwelling already having been provided.

28. It is recorded that "a full and detailed debate ensued". Points made by those speaking are recorded as including:

> "vii) there were no exceptional planning grounds to warrant approval of the application;
>
> …
>
> x) development could take place in an [AONB] provided there was justification;
>
> … [and]
>
> xii) the development complied with the [NPPF]."

This debate did not apparently include any consideration of alternative sites: none is recorded in the minutes.

29. A motion that the officer's recommendation to refuse the application be accepted was lost five votes to eight, with one abstention. A second motion to delegate authority to the Council's Head of Planning to approve the application subject to conditions and the prior completion of a s106 agreement was carried by a vote with the same split. The reasons accorded to the proposer for wishing to approve the application are recorded as follows:

> "The development would go some way to addressing the identified affordable housing need for the Parish. The development with the appropriate Planning Obligation would not put undue pressure on existing infrastructure in the area. The site was close to the edge of an existing settlement and was within an acceptable distance of many essential day to day services and facilities, and was on a public transport route meaning the site was considered to be a relatively sustainable location for housing development. On balance, through the imposition of planning conditions it was concluded that the provision of affordable housing would outweigh any impact on the [AONB]. The application was therefore considered to accord with saved Policies 1, 2, 3, 9, 10, 15, 16 and 28 of the Cornwall Structure Plan 2004, saved Policies 1, 2, 3, 6, 7, 13, 18, 37, 50, 74, 75, 79, 80, 110 and 114 of the Restormel Local Plan 2001, and sections 1, 2, 3, 6, 7, 10 and 11 of the National Planning Policy Framework 2012."

Again, it is to be noted that these reasons make no reference to the alternative sites point, so crucial in the analysis of the officer.

30. On 14 March, a section 106 agreement was completed; and, on 21 March 2013, the planning permission was issued. The permission contains a paragraph headed "Reason(s) for Approval" which sets out, verbatim, the reasons given by the proposer set out in the minutes, which I have quoted.

31. The Claimant had opposed the application for planning permission. Following its grant, on 23 April 2013, the Claimant sent the Council a pre-action protocol letter, indicating that it challenged the grant of permission, on a number of grounds including the following, the numbers being mine:

Ground 1: The Council made its decision on a materially incorrect construction of the relevant policies in relation to the AONB.

Ground 2: In breach of the Town and Country Planning (Development Management Procedure) (England) Order 2010 (SI 2010 No 2184, "the 2010 Order"), the Council failed to give a proper summary of their reasons for the grant of permission.

Ground 3: In breach of the Town & Country Planning (Environmental Impact Assessment) Regulations 2011 (SI 2011 No 1824, "the 2011 Regulations") (and European Directive 2011/92/EU ("the EIA Directive"), which the regulations implement), the Council failed to adopt an EIA screening opinion.

32. Three things then happened.

33. First, in response to that pre-action letter, on 10 May 2013, the Council wrote to the Claimant conceding Grounds 2 and 3, and indicating that the Council would consent to judgment against it for the decision to be quashed and remitted to the Council for redetermination. The Council agreed to pay the Claimant's pre-action costs, and a consent order was drawn up and signed by both the Claimant and the Council on 17 June 2013. In relation to Ground 2, the Council accepted that the grant of permission "failed to adequately specify what exceptional circumstances weighed in favour of granting permission such as to outweigh the impact of the development of the AONB". In relation to Ground 3, the Council simply conceded that they had failed to adopt a screening opinion. Despite the fact that, by the time they signed the draft Consent Order, they had adopted a screening opinion in relation to that development (see paragraph 35 below), the Council did not seek to say that that error in law was immaterial. They appeared to accept that, alone or at least in combination with their failure to give reasons, it was sufficient to require the quashing and redetermination of the decision. However, the Developer, an Interested Party, did not consent to a quashing order. These proceedings were therefore issued on 30 May 2013 and have been pursued, but with the Council playing no substantive role, the claim being resisted by only the Developer.

34. Second, on 13 May 2013, the Developer made a duplicate application for planning permission for development of the Site. This second application, as originally made, was initially for a development identical to that proposed in the first application.

35. Third, that same day, 13 May, the Developer requested an EIA screening opinion from the Council in relation to that development. In response to that application, on 4 June 2013 the Council adopted a screening opinion which found that the proposed development was unlikely to have a significant adverse impact because of the absorption capacity of the neighbouring developed area; and the environmental impact of the proposed development would be largely limited to visual impact on the AONB and loss of agricultural land. The opinion concluded that the proposed development was not EIA development, and EIA was therefore not required.

36. However, during the course of the second planning application, various changes have been made to the proposed development, with the result that, on 28 October 2013, the Council adopted a further screening opinion in respect of the proposed development as amended. The reasoning and conclusion of the opinion were the same: the development was not EIA development, and EIA was not required. The second planning application for the Site is due to be considered by the Council at a meeting of the Planning Committee on 18 December 2013.

37. In relation to the challenge to the 21 March 2013 grant of planning permission, on 5 August 2013 His Honour Judge Jarman QC gave permission to proceed on Grounds 1, 2 and 3, refusing permission on all other grounds. Those other grounds are no longer pursued.

38. At the hearing of the substantive claim before me, Mr Alex Goodman for the Claimant had as his only opponent Mrs Harriet Townsend on behalf of the Developer as Interested Party.

39. The Developer's stance, briefly put, has been to deny that the Council erred in its approach to the relevant AONB policies (Ground 1), and to aver that the reasons given for the grant were adequate (Ground 2). The Developer accepts that, in failing to adopt an EIA screening opinion (Ground 3), the Council erred in law; but contends that that error was immaterial, because the 4 June 2013 screening opinion, in relation to precisely the same development, concluded that this was not EIA development and EIA was not required. Therefore, even if the Council had complied with its obligation to adopt a screening opinion, the result of the planning application would inevitably have been the same; and therefore no one, including the Claimant, has been prejudiced by the Council's breach. In those circumstances, Mrs Townsend submitted that the court should exercise its discretion not to quash the grant.

The Legal Principles

40. The three grounds upon which Mr Goodman relied are as briefly set out in paragraph 31 above.

41. The legal principles relevant to those grounds are, for the most part, uncontroversial.

    i) In a substantial planning application, as in this case, a planning authority usually delegates the substantive determination to a committee or sub-committee of council members ("the committee").

    ii) Section 70(2) of the Town and Country Planning Act 1990 provides that, in dealing with an application for planning permission, the committee must have regard to the provisions of "the development plan", as well as "any other material consideration". "The development plan" for any area is defined by section 38 of the Planning and Compulsory Purchase Act 2004 to include adopted local plans. Plans and policies which have not yet been adopted are still a material consideration, but their weight will be less and will be dependent upon (e.g.) the stage they have reached towards adoption. Section 38(6) 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."

Section 38(6) therefore raises a presumption that planning decisions will be taken in accordance with the development plan, looked at as a whole; but that presumption is rebuttable by other material considerations.

iii) "Material considerations" in this context include statements of central government policy, since March 2012 set out mainly in the NPPF, which replaced many earlier policy documents.

iv) Where there is relevant guidance, the committee or other decision-maker may depart from it, but must give reasons for doing so.

v) The committee cannot have proper regard to relevant policies unless they understand those policies. They therefore have an obligation to proceed on the basis of a proper understanding of relevant policies as properly construed, the true interpretation of such policies being a matter of law for the court. The committee must, in short, ask themselves the right questions, as objectively required by the policy. Where the committee have misunderstood or misapplied a policy, that may found a challenge to his decision, if it is material, i.e. if their decision would or might have been different if they had properly understood and applied the guidance (Secretary of State for Education and Science v Tameside Metropolitan Borough Council [1977] AC 1014 at page 1065B, Gransden & Co Ltd v Secretary of State for the Environment (1985) 54 P & CR 86 at page 94 per Woolf J, and Tesco Stores Ltd v Dundee City Council [2012] UKSC 13 at [17]-[19] per Lord Reed).

vi) Whilst they must take into account all material considerations, the weight to be given to such considerations is exclusively a matter of planning judgment for the committee, who are entitled to give a material consideration whatever weight, if any, they consider appropriate, subject only to their decision not being irrational in the sense of Wednesbury unreasonable (Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759 at page 780F-G per Lord Hoffman).

vii) However, the relevant policy may properly include guidance as to the weight to be given to a particular factor. Where it does so, as I recently emphasised in Bayliss v The Secretary of State for Communities and Local Government [2013] EWHC 1612 (Admin) at paragraph 3(v), weight is still a matter for the committee or other decision-maker; but they must take into account any policy guidance as to weight, which is itself a material consideration. In the usual way, the committee can depart from the guidance, and give the factor a different weight; but, if they do, they must give reasons for doing so.

viii) Although this may be supplemented by (e.g.) information provided at a meeting, as in this case, the committee usually act on the basis of information provided by a planning case officer in the form of a report. Again as in this

case, such a report usually also includes a recommendation as to how the application should be dealt with. In approaching reports, it has to be borne in mind that they are addressed to a "knowledgeable readership" (R v Mendip District Council ex parte Fabre (2000) 80 P & CR 500, per Sullivan J as he then was; see also Oxton Farms, Samuel Smiths Old Brewery (Tadcaster) v Selby District Council (18 April 1997) 1997 WL 1106106, per Pill LJ).

42. As from 25 June 2013, a planning authority has had a statutory obligation to give reasons only when granting permission with conditions (articles 2 and 7(a) of the Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2013 (SI 2013 No 1238)). However, at the relevant time (21 March 2013), for all grants of planning application such an authority was obliged to provide both a summary of their reasons (article 31(1)(a)(i) the 2010 Order), and a summary of the policies and proposals in the development plan which were relevant to the permission (article 31(1)(a)(ii)).

43. I was referred to a plethora – a word I use advisedly – of authorities on the extent of that obligation, including R (Siraj) v Kirklees Metropolitan Council [2010] EWCA Civ 1286; [2011] JPL 571 at [15], R (Macrae) v Herefordshire District Council [2012] EWCA Civ 457, R (Cherkley Campaign Ltd) v Mole Valley District Council [2013] EWHC 2582 (Admin) and R (Wildie) v Wakefield Metropolitan District Council [2013] EWHC 2769 (Admin). Although there was considerable debate before me on the scope of reasons in this context, it is unnecessary for me to add to that jurisprudence. From the cases, the following principles appear to me now well-settled.

i) When planning permission is granted, only summary reasons are required. The duty to give summary reasons is not to be equated with either the obligation to give full reasons for refusing permission, or the obligation imposed on the Secretary of State (or inspector acting in his behalf) to give reasons when determining a planning appeal.

ii) However, the summary reasons must be sufficient to enable a member of the public with an interest in the lawfulness of the permission granted to understand the rationale of the decision, and to ascertain whether, in granting the permission, the decision-maker correctly interpreted relevant policies.

iii) Whether summary reasons given are adequate will depend on the circumstances of the particular case.

iv) An important circumstance will be whether a decision-making committee agree with the officer's report. Absent any indication to the contrary, it can usually be assumed that a committee who agree with an officer's recommendation also agree with that officer's reasoning, so that short summary reasons will be adequate. In particular, in those circumstances, the committee can be assumed to agree with the officer's analysis of relevant policies.

v) But, where the committee disagree with the officer's recommendation, it may not be so easy to assume that they have interpreted the relevant policies in the same way as the officer, particularly where a difference in interpretation might

explain the difference in the conclusions they have reached. In any event, it must be evident from the summary reasons how and why the committee have rejected the officer's advice and thus come to the conclusion to which they have come. That can, of course, be done in any form.

vi) Therefore, whilst the standard of reasons does not, as a matter of law, change, in practice it is likely that summary reasons will have to be drafted with greater care where the committee disagree with the recommendation of the officer, to enable members of the public to understand the rationale of their decision, and to make it apparent that they have understood and properly applied relevant policies.

The Claimant's Grounds

44. I now turn to the Claimant's grounds.

Grounds 1 and 2

45. These two grounds can conveniently be dealt with together.

46. Mr Goodman submitted that it is not apparent from the summary reasons that the Planning Committee members had identified the specific relevant policy requirements, understood those requirements, and had asked themselves the right questions in accordance with that policy. He concedes that there was a clearly identified need for affordable housing in Mevagissey; but the whole of the village fell within the AONB. In those circumstances, paragraphs 115-116 of the NPPF required the members of the Planning Committee to address themselves to (i) whether there were exceptional circumstances, and (ii) whether it had been demonstrated that, despite giving great weight to conserving the landscape and scenic beauty in the AONB, the development would be in the public interest. There is no suggestion in the summary reasons that they addressed themselves to either question, or indeed to paragraphs 115-116 of the NPPF at all. They do not address the question of alternative sites at all, although this was regarded by the officer as crucial. The summary reasons are therefore legally inadequate, because, from them, it cannot be discerned that the Planning Committee members correctly understood and applied the NPPF guidance, or even had that guidance in mind; the rationale of the Committee's decision cannot be ascertained; and it remains entirely unclear as to how and why they disagreed with the officer's analysis in the context of the policy and thus her conclusion.

47. Further, as their core reason, the Planning Committee said, "On balance, through the imposition of planning conditions it was concluded that the provision of affordable housing would outweigh any impact on the [AONB]". Mr Goodman submitted that that indicates that, far from complying with the policy requirements of the NPPF, they simply weighed the various material considerations and concluded that the need for affordable housing outweighed any impact on the AONB. If that were so, then their approach to the policy would be, in substance, incorrect – and there is nothing in the rest of the summary reasons, or elsewhere, to suggest that they did not so err. They had, in effect, simply ignored the requirements of the policy. That was a clear error of law.

48. Consequently, Mr Goodman submitted that the Council were correct to concede that they erred in failing to give proper summary reasons (Ground 2); but, further, although not conceded by the Council, I could and should be satisfied that the Committee members had failed properly to understand and apply paragraphs 115-116 of the NPPF (Ground 1).

49. Mrs Townsend responded as follows:

i) She did not seek to argue that the Planning Committee decided to depart from the guidance in paragraphs 115-116. She also conceded that, if the Committee had indeed misunderstood or misapplied the policy set out in paragraphs 115-116 of the NPPF, they erred in law and the grant of planning permission should be quashed. She further conceded that, as the Committee disagreed with the officer's recommendation, there had to be a rational and discernible basis for doing so. However, she contended, as properly reflected in the summary reasons, the Committee had that policy in mind, they correctly applied it and they had a rational and discernible basis for disagreeing with the officer.

ii) She submitted that there is nothing in the summary grounds to suggest that the Planning Committee members did not identify, approach and apply the policy correctly; and, in the last sentence of the Committee's summary reasons, it is positively stated that they considered the application accorded with the relevant national and local policies, which were listed and which included section 11 of the NPPF into which paragraphs 115-116 fall. The relevant policies were properly set out and analysed in the officer's report. The members had a "full and detailed debate" on the application, during which (Mrs Townsend submitted) contributors were clearly exercising their minds as to the correct policy questions, because one Council member said that "there were no exceptional planning grounds to warrant approval of the application", whilst in the view of another "the development complied with the [NPPF]". Given that their geographical area was comprised largely of the AONB, the members must have been well-used to determining applications on the basis of the policies relevant to the AONB.

iii) The "exceptional circumstances" required by paragraphs 115-116 of the NPPF were provided by the exceptional need for affordable housing in the parish. I was referred to the letter of the Developer's planning consultants (CSA Architects) dated 27 September 2012, sent to the Council after the officer's report had been made available and before the 3 October 2012 meeting. That letter refers to the "substantial, overwhelming and exceptional need for the delivery of affordable housing". Mrs Townsend submitted that that exceptional need, alone or when considered in all the circumstances of the case, provided the exceptional circumstances required for paragraphs 115-116.

iv) Given those exceptional circumstances, the officer identified the key issue, namely the balance between the adverse impact on the AONB and the need for provision of affordable housing. It was clear, Mrs Townsend submitted, that the Committee members gave the conservation of the AONB "great weight", as required by paragraph 115 of the NPPF, because the reasons confirm that

the Committee considered the application accorded with section 11 of the NPPF into which paragraph 115 falls.

v) The Claimant's challenge is, in substance, a challenge to the merits of the Planning Committee's decision. The officer's conclusion, as set out in her reasons for refusing the application in paragraph 126 of her report (see paragraph 24 above) and her key issues document produced for the 3 October 2102 meeting (see paragraph 26 above), was that the adverse impact on the AONB outweighed the need affordable housing. The Committee had simply concluded the opposite, namely that the need for provision of affordable housing outweighed any impact on the AONB (see their reasons: paragraphs 29-30 above). That was a matter of planning judgment the Planning Committee were entitled to make, with which this court should not interfere.

50. Mrs Townsend made those submissions eloquently and powerfully, but I am unable to accept them for the following reasons.

51. Where an application is made for a development in an AONB, the relevant committee or other planning decision-makers are required to take into account and weigh all material considerations. However, as I have explained above (paragraph 6), the NPPF places the conservation of the landscape and scenic beauty of an AONB into a special category of material consideration: as a matter of policy paragraph 115 requires it to be given "great weight", and paragraph 116 of the NPPF requires permission for a major development such as this in an AONB to be refused save in exceptional circumstances and where it can be demonstrated the proposed development is in the public interest. In coming to a determination of such a planning application under this policy, the committee are therefore required, not simply to weigh all material considerations in a balance, but to refuse an application unless they are satisfied that (i) there are exceptional circumstances, and (ii) it is demonstrated that, despite giving great weight to conserving the landscape and scenic beauty in the AONB, the development is in the public interest. The committee may of course depart from the guidance (see paragraph 41(iv) above), but (i) the Planning Committee certainly gave no reasons for doing so, and (ii) as I have indicated above (paragraph 49(i)), Mrs Townsend did not seek to argue that they did, in this case, deliberately and informedly depart from the guidance.

52. There is a pressing need for affordable housing to be provided in Mevagissey. The Claimants do not suggest otherwise: it is not their case that there is no such need, but rather that the need should be satisfied at locations other than the Site, because of its peculiarly prominent and sensitive location within the AONB. Mrs Townsend submitted that the requirement for "exceptional circumstances" for the purposes of paragraphs 115-116 was satisfied by the "exceptional need" for affordable housing in Mevagissey, relying on the letter of the Developer's consultant which described the need for affordable housing in the parish as "substantial, overwhelming and exceptional" (see paragraph 49(iii) above). No doubt pressing need for the provision of affordable housing may be a significant factor in the assessment of whether the circumstances are exceptional, but:

i) there is no evidence, other than the assertion of the Developer's own planning consultants, that the need in Mevagissey is in itself "exceptional" in the sense of unusual or rare;

ii) in any event and far more potently, any assessment of "exceptional circumstances" must be done in respect of a specific proposed development; and

iii) neither the officer nor the Planning Committee in this case said that the need for affordable housing in Mevagissey amounted to "exceptional circumstances" for the purposes of paragraphs 115-116 of the NPPF.

Even if there were an exceptional need for affordable housing in an area, that would not necessarily equate to exceptional circumstances for a particular development, because there may be alternative sites that are more suitable because development there would result in less harm to the AONB landscape. In this case, that is exactly what the officer concluded (see paragraphs 20-22 above). She did not consider that the need for affordable housing amounted to exceptional circumstances for the proposed development, either looked at alone or with other factors, because there were other possible deliverable developments on other sites that would cause less damage to the AONB. That was, of course, a matter of planning judgment; but, given the terms of paragraphs 115-116 of the NPPF and the fact that ASA had a scoring matrix system which meant that adverse impact on the environment played very little part (see paragraph 16 above), that conclusion was clearly rational and one to which she was entitled to come.

53. If the officer can be criticised at all, then perhaps the key issue question she posed in the single sheet she presented at the 3 October 2012 meeting was over-simplified. It was of course drawn from the conclusion in paragraph 125 of her report (see paragraph 24 above). When looked at in the full context of her report (or even just in the full context of her conclusions set out in paragraphs 123-125 of her report), it is clear that the officer had carefully gone through the mechanics required of her by paragraph 115-116 of the NPPF; and, having done so, in all the circumstances and giving the conservation of the landscape and scenic beauty in the AONB "great weight", because there were alternative deliverable sites which would meet the need for affordable housing without the same level of harm to the AONB, she did not consider that there were exceptional circumstances, nor did she consider that it had been demonstrated that the development would be in the public interest. Paragraph 125 of her report states:

> "It is *therefore* concluded that the adverse impact of this proposal in this prominent undeveloped coastal location in the AONB outweighs the provision of affordable housing and the application should therefore be refused." (emphasis added).

That conclusion is expressly the culmination of her analysis. It was, however, transposed starkly into her key issues single-page without reference to that context. Looked at outside the context of her report seen as a whole, it could appear that she had concluded that the damage to the AONB outweighed the need for affordable housing on the basis of a simple balancing exercise. However, looked at in its proper context, it was clearly shorthand for the conclusion and reasons to which I have just alluded.

54. It was the Planning Committee's duty to exercise their own judgment on the application. In doing so, they were of course entitled to come to a different

conclusion from that of the officer. However, they could not do so without, in their summary reasons, (i) indicating that they had correctly identified, understood and applied the relevant policies, notably paragraphs 115-116 of the NPPF; and (ii) explaining, if but briefly, why they had come to the conclusion they had, and thus why they considered the officer's conclusion wrong.

55. Mrs Townsend submitted that the summary reasons were not only adequate, but they made clear that the Planning Committee members had in fact properly identified, understood and applied the relevant policies. She submitted I could be satisfied of these matters from looking at the face of the summary reasons; or, if not from that alone, from the summary reasons seen in their full context, including the officer's report and the debate upon it, of which the Committee members had the benefit.

56. Of the summary reasons themselves, Mrs Townsend relied upon two specific parts. First, she submitted that the crucial issue for consideration and determination by the Committee was the balance between the adverse impact on the AONB and the need for provision of affordable housing. That had been correctly identified by the officer as the key issue. She had considered the adverse impact on the AONB outweighed the need for affordable housing. The Committee had correctly identified that issue – and their determination of it – where they say, in their summary reasons:

> "On balance, through the imposition of planning conditions it was concluded that the provision of affordable housing would outweigh any impact on the [AONB]."

57. However, I cannot accept that. First, it presupposes that the Committee members had identified exceptional circumstances: but there is no suggestion in the summary grounds that they had (indeed, as I have indicated, the Council themselves concede that the grounds are silent on this point: see paragraph 33 above); and, for the reasons I have given, it cannot be assumed that need for affordable housing necessarily amounted to "exceptional circumstances" for the purposes of paragraphs 115-116.

58. But, in any event, this passage, looked at fairly, suggests that the Committee found that the need for affordable housing outweighed the harm to the AONB that the development would cause, on the basis of a simple balancing exercise. However, they were not performing a simple balancing exercise. They could only approach the application on the basis of the paragraphs 115-116 of the NPPF: they had to find exceptional circumstances, and then, giving the conservancy of the AONB great weight, determine whether other factors (including of course the need for affordable housing) meant that the public interest was nevertheless in granting permission for the development. I agree with Mr Goodman's submission: the words in the summary grounds relied upon by Mrs Townsend suggested – and, in my view, very strongly suggested – that they had ignored the requirements of paragraphs 115-116 of the NPPF, and adopted a wrong approach. Even if, as may have been the case, they were drawn into error by the terms of the key issue as set out on the single sheet by the officer for the purposes of the 3 October meeting – which may have been the case (see paragraph 53 above) – that makes their error none the less.

59. Second, Mrs Townsend relied upon the fact that the Planning Committee's summary reasons expressly stated that the application accorded with paragraphs 115-116 of the NPPF. She relied upon that particularly to show that the members had attached "great

weight" to the conservancy of the AONB, as required by paragraph 115. However, the relevant sentence in the reasons reads:

> "The application was therefore considered to accord with saved Policies 1, 2, 3, 9, 10, 15, 16 and 28 of the Cornwall Structure Plan 2004, saved Policies 1, 2, 3, 6, 7, 13, 18, 37, 50, 74, 75, 79, 80, 110 and 114 of the Restormel Local Plan 2001, and sections 1, 2, 3, 6, 7, 10 and 11 of the National Planning Policy Framework 2012".

There are there listed sections of the NPPF which comprise all but half of that lengthy document, together with large sections of local policy documents. As Collins J emphasised in R (Tratt) v Horsham District Council [2007] EWHC 1485 (Admin) at [18], article 31(1)(a)(ii) the 2010 Order (see paragraph 42 above), required, not simply a list of policies, but an indication of the matters to which those policies were relevant in the specific context of the application. The list in this case was, on that basis, in breach of that article. However, of greater importance is that, for the purposes of article 31(1)(a)(i), whilst the summary reasons do say that the Committee – or at least the eight who voted for the motion – considered that the application accorded with those policy provisions, it cannot be assumed or otherwise derived from that reference to broad swathes of policy that Committee members had regard to the specific requirements of paragraph 115-116. R (Macrae) v Herefordshire District Council [2012] EWCA Civ 457, to which I was referred, is an example of a case where the simple listing of sections of relevant policy was insufficient to show that the planning decision-makers addressed the right issues under a specific policy. This, in my judgment, is clearly another. From the reference in this case to policy relied on, one simply cannot assume, without more, that the Council members had in mind the requirements of paragraphs 115-116, buried away in section 11.

60. However, Mrs Townsend submitted that there was more: there were matters outside the summary reasons themselves, that showed both that the Planning Committee members in fact had in mind, understood and properly applied the policy in paragraphs 115-116 of the NPPF, and that the summary reasons, when looked at in context, were adequate. However, even leaving aside the caution with which extraneous matters should be considered when determining the sufficiency of summary reasons (see Macrae at [28] per Sullivan LJ), I do not find these submissions compelling.

61. First, Mrs Townsend relied upon the officer's report, which, it is accepted, set out the relevant policies and analysed them properly, identifying the correct issues under them. The Committee of course had that report before them, and, Mrs Townsend submitted, it can be reasonably assumed that they had read it, understood it, and applied the same analysis as the officer – merely coming to a different conclusion from her. The officer's analysis was indeed properly focused on the relevant policy requirements; but, as I have indicated (paragraph 43(v) above), where a decision-making planning committee disagree with the officer's recommendation, it is often difficult to make the assumption that they have interpreted the relevant policies in the same way as the officer, particularly where (as in this case) a difference in interpretation might explain the difference in the conclusions they have reached. In my judgment, that assumption cannot be made in this case. There is no substantial evidence that the Committee members engaged with the issues the report raised and

analysed, in terms of the paragraph 115-116 requirements generally or, specifically, the issue of alternative sites considered crucial by the officer. Indeed, the evidence very strongly points against their having done so. In particular, in my judgment, an assumption that the Planning Committee gave the conservancy of the AONB "great weight" cannot be made on the basis of the generic reference to section 11 of the NPPF in the summary reasons, even when taken with the officer's report which refers to that weight.

62. Second, Mrs Townsend relied upon the minutes of the 3 October 2012 meeting, at which the application was considered and determined; and particularly the main points raised in the debate as referred to in paragraph 28 above. However, it cannot be assumed from those general references that the Committee members had in mind the particular requirements of paragraphs 115-116; and there is in the minutes no reference to any debate or discussion on the issue of alternative sites, only that the councillor for Mevagissey said that she considered there were other potentially suitable sites which would have less impact on the AONB (see paragraph 27 above). One cannot conclude from that alone that the Committee members, generally, engaged with the question of alternative sites. Again, the evidence points very strongly against their having done so.

63. Finally, Mrs Townsend relied upon the fact that the Committee members were experienced in planning matters and, because of the geographical area they covered, it could be assumed that they were experienced in determining planning applications within the AONB. I accept that. However, in all of the circumstances of this case, I do not consider that one can properly assume from that experience alone (or, for the reasons I have given elsewhere in this judgment, taken with everything else in this case) that they had in mind, and understood and applied, the requirements of paragraph 115-116 in this particular case; and properly addressed their minds to the scope for alternative ways on which the accepted need for affordable housing could be met in Mevagissey by developments on alternative deliverable sites that would do less harm to the landscape and scenic beauty of the AONB.

64. In my judgment, the summary reasons given for the Planning Committee's decision to grant the application were plainly legally inadequate; they did not set out the rationale for their decision to grant permission; from the reasons it is impossible to discern how and why they disagreed with the officer's analysis and recommendation to refuse it; and the reasons did not evidence that the Committee members had properly understood or applied the relevant policies. They had at least to address the officer's reason for finding that there were no exceptional circumstances, i.e. that there were alternative deliverable sites. The Committee members appear not to have considered alternative sites at all: there is no mention of them in their reasons, nor in the recorded debate. I do not consider that they can be criticised for not considering alternative sites outside the parish, as Mr Goodman sought to do – because there was no evidence that such sites might be available, and it is inherently unlikely that they would be – but the Committee were required to consider alternative sites within the parish, which were crucial to the officer's analysis and conclusion. As it is, we are certainly left not knowing why they departed from the recommendation of their officer. As the Council accept, we do not know what "exceptional circumstances" they found and why. We do not know whether they disagreed with the officer that there were other deliverable sites that would result in less harm to the AONB, and, if they did, whether that was

because they disagreed with her as to the relative harm caused by the various alternative sites including the Site or whether they disagreed with her views on deliverability of the other sites. The summary reasons neither indicate that the Committee members properly understood and applied the relevant policies, nor from them can the rationale of the Committee's determination be discerned.

65. However, as Mrs Townsend submitted, there is a close connection between Grounds 1 and 2; and, in my judgment, the inadequacy of reasons I have found was a clear reflection of an actual failure of the Planning Committee to grapple with the issues that the policy required them to deal with. Eloquently, Mr Goodman submitted that, even on the most kindly construction, it is not possible to infer from the available evidence that the Planning Committee appreciated that it was required to refuse permission unless there were exceptional circumstances in the public interest which outweighed the weight required to be given to the scenic beauty of the AONB, or that they appreciated that that policy required the scenic beauty factor be accorded "great weight", or that they were required to consider other ways of meeting the identified need for affordable housing. For the reasons I have given, I agree. There is no simply evidence that they engaged with the exercise required of them by paragraphs 115-116 of the NPPF, which required them to assess the need for the development, the scope for developing elsewhere outside their area or meeting the identified need in some other way, and the detrimental effect on the environment and landscape, whilst giving "great weight" to the scenic beauty factor. Such engagement and proper analysis cannot be assumed in this case for the reasons I have given. I am therefore satisfied that, unfortunately, the Committee failed to have proper regard to the relevant planning policies, and in particular failed to give the conservancy of the AONB great weight and failed to consider the scope for alternative sites.

66. For those reasons, Mr Goodman has made good both Grounds 1 and 2.

67. As I have indicated, Mrs Townsend properly conceded that, if I were to find Ground 1 made good, as I have, then the decision to grant planning permission could only properly be quashed. My findings on that ground are therefore determinative of relief: the grant of planning permission must be quashed.

Ground 3

68. As my findings in relation of Ground 1 are dispositive of this action, I can deal with Ground 3 much more briefly that would otherwise have been the case.

69. The EIA Directive is designed to ensure that developments which may have a significant effect on the wider environment ("EIA development") are subject to enhanced consultation and assessment of that effect. Some proposed developments, by their nature, attract those enhancements in any event ("Schedule 1 developments"). Others may attract those enhancements because they are likely to have significant effects on the environment by virtue of factors such as their nature, size or location ("Schedule 2 developments"). That necessitates an initial assessment of whether a particular Schedule 2 development is likely to have such effects. If it is concluded that it is, then it is required to have the enhanced EIA: if it is concluded that it is not, then there is no additional requirement. Schedule 3 of the Directive sets out criteria by which a decision-maker must determine whether such a development that falls within one of a number of specified categories requires these enhancements.

70. The Directive has been implemented through the 2011 Regulations. Where it appears to a planning authority that it has an application for a Schedule 2 development for determination, then it must adopt a "screening opinion" (regulations 7 and 5(5)). A screening opinion is a "written statement of the opinion of the relevant planning authority as to whether development is EIA development" (regulation 2(1)).

71. The development of the Site was a Schedule 2 development, but, prior to their decision to grant the application, the Council did not adopt a screening opinion. It seems fairly clear that everyone, including all of the parties to this claim, wrongly assumed that the development was not EIA development. It is common ground that, in that failure, the Council erred in law: they breached regulations 7 and 5(5) of the 2011 Regulations.

72. The Council have accepted that, as a result of that error (or at least, as a result of that error when taken together with their failure to give adequate reasons, which they also conceded was an error of law), their decision to grant planning permission should be quashed. The Developer, however, disagreed, being of the view that, despite that error, the court should exercise its discretion not to quash the decision, on the basis that the error was immaterial. The point is now academic, as my findings on Ground 1 are dispositive of relief. However, in deference to Counsel's submissions on the issues raised – which are far from easy – I should say something briefly on this third ground.

73. I was referred to a number of cases as to the correct approach as to relief in public law claims. The conventional domestic position is that, where an administrative decision has been found to be unlawful, although usually the relief will include an order quashing the decision (see, e.g., Berkeley v Secretary of State for the Environment [2001] 2 AC 603 at page 616F per Lord Hoffman), the court may exercise its discretion not to do so. In exercising that discretion, the court will take all the circumstances of a particular case into account; but it may be persuaded not to quash a decision because the breach of obligation was immaterial, i.e. the administrative decision would undoubtedly have been the same, even if the breach had not occurred. That approach has recently been confirmed as applying equally to cases in which the relevant obligation derives from European law (Walton v The Scottish Ministers [2012] UKSC 44; [2013] Env LR 16 at [139] per Lord Carnwath and at [156] per Lord Hope; Burridge v Breckland District Council [2013] EWCA Civ 228 at [89] per Davis LJ and at [116] per Warren J, Pill LJ apparently dissenting on this point; and R (Catt) v Brighton & Hove City Council [2013] EWHC 977 (Admin) at [142] per Lindblom J). As to approach, I consider myself bound by those authorities and, to the extent that they differ, I should not follow R (Bateman) v South Cambridgeshire District Council [2011] EWCA Civ 157 or the minority in Burridge (although I am sceptical as to the extent those cases in fact sought fundamentally to alter the conventional test). Bound as I am, I should emphasise that I would have held that there is discretion to withhold relief even had I been left to my own devices. This court deals with matters in the real world, and should be slow to grant relief where the challenged decision would inevitably have been the same but for the breach of obligation, neither the claimant nor anyone else has suffered any real prejudice, and there is no other good ground for relief being granted.

74. Mrs Townsend submitted in this case that I could be confident that, even if the Council had adopted a screening opinion as they ought to have done, that would and

could have made no difference to the outcome; because the development has now been the subject of such screening and the 4 June 2013 opinion has concluded that this is not EIA development. There had been no possible material change of circumstance in relation to the development. Therefore, had a screening opinion been adopted when it should have been, it would have been negative. The development is not EIA development and therefore does not require any enhanced EIA. As a consequence, neither the Claimant nor anyone else has been prejudiced, or has missed out on any opportunity. Furthermore, the underlying objective of the EIA Directive – that EIA development is subject to enhanced EIA requirements, and non-EIA development is not – has been met.

75. Although the court should be cautious before denying relief in the form of a order quashing an unlawful decision and the Council themselves have not sought to suggest that its failure to adopt a screening assessment was immaterial, I find those submissions compelling. Mr Goodman tried to persuade me that the 4 June 2013 screening opinion has in some way been "tainted" by the fact that the Council had previously given planning permission with regard to the development. However

    i) there is no evidence that there was, even arguably, any such influence; and

    ii) the 4 June 2013 screening opinion was adopted after the Council had conceded that the earlier decision to grant planning permission should be quashed, so that there was no possible incentive to adopt a screening opinion that might support upholding it; nor do I consider unconscious influence, suggested by Mr Goodman, to be realistic.

76. Finally, although the 4 June 2013 screening opinion did not go onto the planning register – because, as planning permission for the development had been granted, it was no longer registrable – I do not consider that to be in breach of the criteria, derived from R (Mellor) v Secretary of State for Communities and Local Government (2009) CJEC Case C-75/08; [2010] PTSR 880 at [57], that the public must be made aware of the reasons for a Schedule 2 development being held not to be an EIA development. Mellor requires a mechanism for third parties to satisfy themselves that the relevant authority had properly determined that an EIA was or was not necessary: but, in this case, the Claimant is well aware of the 4 June 2013 screening opinion, which was attached to the Developer's Acknowledgment of Service in this claim which was served in June 2013. The Claimant has simply suffered no possible prejudice by reason of the Council's failure to obtain a screening opinion for this development, including any failure more generally to publicise the reasons for the screening opinion now obtained.

77. For those brief reasons, had Grounds 1 and 2 failed, I would have exercised the court's discretion not to quash the Council's decision to grant planning permission on the basis of their breach of the screening opinion provisions of the 2011 Regulations alone.

Conclusion

78. However, for the reasons I have given, I allow the judicial review on Grounds 1, 2 and 3; and shall order that the grant of planning permission to the Interested Party

Developer for the Site on 21 March 2013 be quashed, and the application be remitted to the Council for redetermination.