**Statement of Case – Dorset Council**

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**Content:**



Appendices:

## 1. Introduction

- This planning application was received complete 02 November 2023 by Dorset Council (the local planning authority) and validation was completed 06 November 2023.
- Two extensions of time were agreed during the course of the application to allow the applicant to submit additional information.
- This application was refused planning permission 16 July 2024 for the reasons set out below.
- This appeal is made under section 78 (1) of the Town and Country Planning Act 1990 (as amended).

## 2. Proposed development

The planning application submitted by the appellant was termed a hybrid application consisting of two distinct and separate development sites. One site seeks full planning permission for:

- a mixed-use development to erect a food store with cafe, plus office space and 2 No. flats above. Erect building for mixed commercial, business and service uses (Class E), (e.g. estate agents, hairdresser, funeral care, dentist, vet). Form vehicular and pedestrian accesses and parking. Form parking area for St. Gregory's Church and St Gregory's Primary School. Carry out landscaping works and associated engineering operations. (Demolish redundant agricultural buildings). Land west of Church Hill.

and the other site seeks outline planning permission (to determine access):

- to erect up to 120 dwellings. Land off Butts Close and Schoolhouse Lane. Details of access have been provided and are to be determined at this time. Detailed matters relating to layout, scale, appearance, and landscaping are reserved for future consideration.

## 3. Reasons for refusal

Planning permission was refused by Dorset Council (the Council) for the following reasons:

1. The proposed development by reason of its location outside of the settlement boundary of Marnhull would be contrary to Policies 2, 6, and 20 of the adopted North Dorset Local Plan Part 1 (January 2016).

2. The proposed development includes main town centre uses (use class E) measuring 2,356 sqm which is not considered to be small scale rural development contrary to Policies 2, 11 and 12 of the adopted North Dorset Local Plan Part 1, and paragraphs 90 and 91 of the National Planning Policy Framework.

3. Insufficient details of the proposed development have been submitted to enable the Highway Authority to fully assess the highway safety and sustainable transport implications of the proposal and, consequently, it is not clear whether the proposal would be likely to endanger road safety or result in other transport problems contrary to Objective 6 – Improving the Quality of Life, and Policies 2 and 13 of the adopted North Dorset Local Plan Part 1, and

paragraphs 108 criteria d) and e), and paragraph 117 of the National Planning Policy Framework.

4. The proposed development by reason of its siting, scale (in terms of mass and quantum), and appearance would have a less than substantial harm on grade I listed Church of St Gregory, grade II* listed Senior's Farmhouse and Attached Barn, and Marnhull Conservation Area. It is considered that the harm identified would not be outweighed by the public benefits of the proposal contrary to Policies 2 and 5 of the adopted North Dorset Local Plan Part 1, and paragraphs 199, 200, and 202 of the National Planning Policy Framework.

5. The proposed development would require financial contributions towards off-site improvements and possibly on-going maintenance, ecology, and affordable housing, that must be secured by a Section 106 legal agreement. The applicant has not submitted such an agreement, contrary to policies 4, 8, 13, 14, and 15 of the North Dorset Local Plan Part 1 (January 2016).

The appellant has submitted additional information with regard to reason for refusal 3 above with their appeal submission. The Council's Transportation Development Liaison Manager and his team have considered this information and provided comments (see appendix 1). Subject to conditions and financial contributions being secured as set out in the TDLM's comments the Council would no longer defend reason 3.

Similarly, the appellant and the Council are working towards completing a S106 legal agreement which will secure off-site contributions and affordable housing amongst other necessary items to make the development acceptable in planning terms should the Inspector be minded to allow the appeal. Provided this can be completed in a timely fashion the Council would not defend reason 5.

The second reason for refusal should also include NPPF paragraphs 94, and 95.

The fourth reason for refusal should refer to NPPF paragraphs 205, 207 and 208 and not paragraphs 199, 200, 202.

## 4. Main issues of the case

It is the Council case that, with reference to the reasons for refusal, the main issues relate to:

1. The principle of development in these particular countryside locations in light of the relevant development plan polies and other material considerations.

2. Retail matters generally. i.e.:

    a. Marnhull is a village and should not be mistaken for a town centre, urban area or retail centre and there is no defined centre within the village.
    b. By definition (and in any event certainly as a matter of fact and degree) the proposed development is not small scale rural development in light of the Town and Country Planning (Development Management Procedure) (England) Order 2015.
    c. The site is out of town and out of centre location in retail policy terms and the application should have been accompanied by a sequential site assessment. An

assessment has been provided as part of the appeal but it remains to be assessed to determine whether it demonstrates the necessary compliance with policy

d. As a matter of fact and degree, and with regard to LPP1 Policy 12 (i) and (j) it is considered that an impact assessment (as applicable to the scale and nature of the scheme) is required to demonstrate that the proposal will not have a significant adverse impact on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal, nor upon designated town centres vitality and viability.
e. Is there an overriding need for a retail development of this size and scale in light of the appellant's supporting information: RTN, RSTS, etc?

3. Whether the identified harm to heritage assets, having regard to their significance, would be outweighed by the public benefits of the proposed development.

The Council will submit proofs of evidence that expand on these three issue.

## 5. RELEVANT PLANNING POLICY

*The development plan*

The starting point for a determination of this appeal in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990, is the development plan (DP) unless material considerations indicate otherwise. A two-stage process is therefore required starting with an assessment as to whether the scheme is in accordance with the DP as a whole and if not whether relevant material considerations including the benefits of the scheme outweigh the conflict. The judgment in *R v Rochdale Metropolitan Borough Council ex parte Milne* [2000] EWHC 650 (Admin) confirmed that some policies will be more important than others and the degree to which policies are complied with or breached requires a judgment to be made.

The DP which applies to this appeal is the 'saved' policies in the North Dorset District Wide Local Plan to 2011 (January 2003) and the North Dorset Local Plan Part 1 2011-2031 (January 2016)(LPP1). This plan was produced in accordance with the Framework (2012). While the Framework has undergone further iterations, the LP remains in conformity with the current version of the framework (December 2023). Due weight should be given to these policies, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

The following objectives link the vision for North Dorset (District Council, as was.) to the policies in the LPP1 by focusing on the key issues that need to be addressed. The District-wide objectives relate to:

- meeting the challenge of climate change;
- conserving and enhancing the historic and natural environment;
- ensuring the vitality of the market towns;
- supporting sustainable rural communities;
- meeting the District's housing needs; and
- improving the quality of life.

The policies referenced in the reasons for refusal will form the basis for the Council's case as well as the referenced paragraphs and related sections of the Framework. The forthcoming proofs of evidence may have regard to other material considerations as considered necessary.

*North Dorset District Wide Local Plan (January 2003)*

The Secretary of State issued a direction on in September 2007 which 'saved' certain policies in accordance with paragraph 1(3) of Schedule 8 of the Planning and Compulsory Purchase Act 2004.

- Policy 1.7 – Development within Settlement Boundaries. Marnhull has a defined settlement boundary and that boundary was maintained with the LP (2016).

*North Dorset Local Plan Part 1 (January 2016)*

- Policy 2 – Core Spatial Strategy
- Policy 4 – The Natural Environment
- Policy 5 – The Historical Environment
- Policy 6 – Housing Distribution
- Policy 8 – Affordable Housing
- Policy 11 - The Economy
- Policy 12 – Retail, Leisure and Other Commercial Developments
- Policy 13 – Grey Infrastructure
- Policy 14 – Social Infrastructure
- Policy 15 – Green Infrastructure
- Policy 20 - The Countryside.

All development should accord with the core spatial strategy set out in Policy 2. That is, outside the defined boundaries of the four main towns (the settlement boundaries being retained from the 2003 Local Plan), the remainder of the District (including Marnhull and all the District's villages) will be subject to policies where development will be strictly controlled unless it is of a type appropriate or if there is an overriding need for it to be located in the countryside as set out in Policy 20.

It is common ground that the appeal site lies outside the settlement boundary in an area which is defined as countryside.

When considering matters of meeting housing needs Policy 6 helps to refine expectations of housing distribution when implementing the spatial strategy for the area. While Policies 11, and 12 set out the Council's: hierarchy of centres, and spatial approach to economic development respectively.

**6. Other material considerations**

*Annual Position Statement – 5 year housing land supply – October 2024*

On 26 September 2024 Dorset Council received the Planning Inspector's report on its Annual Position Statement 2024. The Annual Position Statement (October 2024) and Appendices A to G confirm that Dorset Council can demonstrate a housing land supply of 5.02 years.

Dorset Council is entitled to rely on the supply stated in the annual position statement until 31 October 2025.

*National Planning Policy Framework (December 2023)*

The Framework is a material consideration in planning decisions as it sets out the Government's planning policies for England and how these should be applied. However, Planning law requires that application for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Written Ministerial Statements may be material considerations, that is to say "so obviously material" that it would be unlawful for a decision-maker to ignore it.

The Framework should be read as a whole (including its footnotes and annexes). That said, the following sections are of particular relevance to this case:

- 2. Achieving sustainable development
- 4. Decision-making
- 5. Delivering a sufficient supply of homes
- 6. Building a strong, competitive economy
- 7. Ensuring the vitality of town centres
- 16. Conserving and enhancing the historic environment

*Written Ministerial Statement – Building the homes we need (30 July 2024)(HCWS48)*

Statement by Angela Rayner – Deputy PM and SoS for Housing, Communities and Local Government

This Statement sets out the current government's intensions of: restoring and raising housing targets, building in the right places, moving to strategic planning, delivering more affordable homes, building infrastructure to grow the economy, supporting local planning, and first step of a bigger plan. There is a clear intention to raise housing targets in this WMS. However, the details of how this ambitious agenda will be achieved is still out to consultation, including proposed changes to the Framework which cannot carry more than limited (if any) weight until publication.

The government's changes to the Framework (published 12 December 2024) has confirmed that the Council's APS will stand until it expires; 31 October 2025.

## 7. Description of site and surroundings

The application site is split into two discrete parcels both of which are outside of the designated settlement boundary for the village of Marnhull. In the southern parcel is proposed the residential development of 120no. dwellings, and in the northern parcel is proposed the retail/commercial development.

Relative to St Gregory's Church which is a grade I listed building at the corner of New Street and Church Hill, the southern parcel shares its northern boundary with the existing development fronting New Street. Toward the northeast corner of the site there are numerous heritage assets outside of the site and part of this northern boundary also serves as the southern extent to the Marnhull Conservation Area. Its eastern and southern boundary extends to Schoolhouse Lane (B3092), while its south-western boundary extends to Chippel Lane and a short section in the northwest extends to Butts Close.

The southern parcel is approximately 7.5 ha and currently used as arable farmland. It slopes from the high ground in the north down to the south along Chippel Lane. There is a public right of

way (footpath N47/28) which crosses the site from Butts Close to Chippel Lane from which one can obtain easy views of St Gregory's tower and some of the other heritage assets to the north-east.

The northern parcel is approximately 5.0 ha and is also currently used as arable farmland. It lies just north of the Church grounds, west of Church Hill, and extends east and north into the central field of Marnhull. There are two PRoW that cross the site; along the northern portion of the site is fp N47/30, and to south is fp N47/31.

The topography of the northern parcel slopes from the high ground of the Church down to the north. From the footpaths there are easy views to the south of the St Gregory's and Senior's Farmhouse (grade II* listed), and to the north looking over Marnhull Conservation Area.

## 8. Relevant planning history

Part of the southern parcel of land has extant planning permission for up to 39no. dwellings.

- Planning application P/OUT/2021/03030 - Develop land by the erection of up to 39 No. dwellings, form vehicular and pedestrian access, and public open space. (Outline application to determine access). Approval issued 02/03/2023. Expiry 01/03/2026.

## 9. Preliminaries of the Council's case

*Principle of development*

In light of the Council's APS, the policies of the adopted local plan are considered to be up to date and should be accorded full weight in the decision-making process.

In the LPP1 Marnhull is identified as one of the larger villages where the focus for growth is to meet local needs outside of the four main towns (Blandford (Forum and St.Mary), Gillingham, Shaftesbury and Sturminster Newton). Despite the extant permissions for additional housing adjacent to Marnhull's settlement boundary its status as a village remains.

With regard to the adopted spatial strategy of LPP1 both of the proposed development sites are adjacent to but outside of the defined settlement boundary. Therefore, in terms of the LPP1 the proposed development is in 'the countryside'. For the considerations of retail/commercial development, with reference to the Framework's Annex 2: Glossary, the northern parcel should be referred to as 'out of town' and not 'out of centre'.

With regard to residential development, the Council's spatial strategy is set out in Policies 2, 6, and 20 of the LPP1. Policy 2 sets out the core spatial strategy stating, with reference to the countryside, "Outside the defined boundaries of the four main towns, Stalbridge and the larger villages, the remainder of the District will be subject to countryside policies where development will be strictly controlled unless it is required to enable essential rural needs to be met…the focus will be on meeting local (rather than strategic) needs." This policy identifies Marnhull as a one of the 'larger villages'.

Policy 20: The Countryside sets out broadly the types of development that might be acceptable in the countryside. Development is limited to a small number of 'exceptions' listed in Figure 8.5 of LPP1 (such as for occupational dwellings), or if it can be demonstrated that there is an

'overriding need' for development to be located in the countryside. The proposed development is not listed in the list of exceptions, neither the retail nor residential aspects of the proposal, and the applicant has not demonstrated there is an overriding need for it to be located in the countryside. Therefore, the scheme does not comply with the spatial strategy of LPP1 which seeks to direct "the vast majority of housing and other development" to the four main towns and control development in the countryside.

Policy 6: Housing Distribution states that 5,700 homes will be provided in North Dorset between 2011 and 2031, and that the majority of these will be in the four main towns. This is equivalent to an average rate of 285 homes a year. The approximate scale of housing outside the four main towns (i.e. in Stalbridge, the villages and countryside) is described as "at least 825 dwellings" over the plan period. The policy explains that this will be to "contribute towards meeting identified local and essential rural needs."

The appellant has not identified any local or essential need for an additional housing in the countryside adjacent to Marnhull. With an up-to-date local plan, it is considered that this test should not be brushed aside under the auspices of 'boosting the supply of homes.' Paragraph 60 of the Framework's stated aim is "to meet as much of an area's identified housing need as possible…". The local plan was found to be sound when examined against the NPPF. The NPPF at the time (as it does now) had a focus on significantly boosting the supply of housing. So there have been no changes in policy which would indicate that the test in the development plan (which has statutory primacy) should be brushed aside.

Marnhull does not yet have a neighbourhood plan, however it is a designated neighbourhood area and the parish council has signalled that a plan is in preparation. The Council considers that development of this scale (both retail/commercial and residential aspects) in this context should be considered through the local or neighbourhood plan process rather than speculatively.

With regard to the proposed retail/commercial development, the Council's spatial approach is encapsulated in Policies 2, 11, and 12. Again the focus of development is placed upon the four main towns. Policy 11 (c) notes that these four will be supported by "the continued improvement of town centres (in accordance with Policy 12) as the main focus for retail, leisure and other commercial activities." While economic development in the countryside (including Stalbridge and the Districts villages) will be supported by "…meeting their own local needs…". Policy 12 sets out a hierarchy of centres for the District (as was) designating the four main town as town centres.

The proposed retail/commercial development is major development in the countryside as defined by the Frameworks Annex 2: Glossary "… For non-residential development it means additional floorspace of 1,000m2 or more, or a site of 1 hectare or more, or as otherwise provided in the Town and Country Planning (Development Management Procedure) (England) Order 2015."

The scale of proposed retail/commercial development may be appropriate in one of the four main towns' town centres, but it is not considered appropriate in the countryside. There is no evidence (because the appellant has not provided any) that the development will not have significant adverse impacts on existing town centre provision. The Council will demonstrate that it will have such an adverse effect. It is therefore not acceptable or appropriate in principle in the countryside.

It seems to be accepted by the appellant that the proposed retail/commercial development would be 'main town centre uses' as they have now provided a Retail Sequential Test Statement. This is in line with the Framework and Policy 12 (h) of the LPP1. This is further expanded on below.

While it is accepted that the Framework has set a default threshold of 2,500 sqm of gross floorspace for requiring an impact assessment, and that LPP1 has not set a locally set floorspace threshold, it is notable that the appellant has not provided anything to demonstrate whether their proposal 'will not have a significant adverse impact' in line with criteria (i) and (j) of Policy 12 (or paragraph 94 of the Framework) given their proposal is not in accordance with and up-to-date plan and the proposal is for large scale rural development in an out of town location.

Section 7 Ensuring the vitality of town centres, paragraphs 90 – 95, of the Framework is focused on town centre, edge of centre, and out of centre development. When paragraph 94 states "When assessing applications for retail leisure development outside town centres…" it would be wrong to think that this means any site beyond the definitions of town centre, edge of centre, and out of centre. Especially when the Framework (in Annex 2) has defined a 'town centre' as:

- Town centre: Area defined on the local authority's policies map, including the primary shopping area and areas predominantly occupied by main town centre uses within or adjacent to the primary shopping area. References to town centres or centres apply to city centres, town centres, district centres and local centres but exclude small parades of shops of purely neighbourhood significance. Unless they are identified as centres in the development plan, existing out-of-centre developments, comprising or including main town centre uses, do not constitute town centres.

To wit, para 94 (b) seeks an assessment "as applicable to the scale and nature of the scheme".

This is an out of town location with no connection to any one of the four main town centres of North Dorset. It should also be noted that the appellant has not submitted any information on connectivity to the closest main town centre (Sturminster Newton). The reliance on private vehicles cuts against sustainability objectives of the development plan and the Framework. For reference, it is less than a 10 minute drive to Sturminster Newton, and less than a 15 minute drive to either Gillingham or Shaftesbury. This is an aspect of planning judgement rather than highway safety that will be addressed with other retail matters.

With regard to the second stage of decision-making, the public benefits of this scheme are considered to relate to better access to retail/commercial services for the residents of Marnhull and the provision of open market and affordable housing.

In light of the extant housing permissions for Marnhull, and the Council's APS, benefits of any open market dwellings in this location should only attract limited weight. While the provision of affordable housing, taking account of housing needs with a local connection and the extant housing permissions for Marnhull, should only attract moderate weight without the demonstration of a local need.

**Retail matters**

*Background*

The original application proposal sought full permission for a mixed-use development including a foodstore, shop units and other main town centre uses on land west of Church Hill, Marnhull, and outline permission for residential development on a separate site to the south. Supporting the mixed-use development, the application was accompanied by a Planning and Retail

Statement (PRS) (dated October 2023) prepared by Chapman Lily (CL) on behalf of the appellant and a Retail Technical Note prepared by Lichfields (dated October 2023).

However, CL took the approach that, as the development was, in their opinion 'small scale rural development' (NPPF, para 93) meeting 'local needs' (Local Plan Policy 12) there was no requirement to undertake a sequential assessment. The need for a retail impact assessment was also rejected given the total floorspace proposed for main town centre uses is slightly below the 2,500 sqm threshold set out in the NPPF and there is no locally set lower threshold.

Despite requests from the Council that the additional information be provided, this was not done and the application was refused 16 July 2024 for 5 reasons including No. 2 detailed above, which did not accept that the proposed development was small scale rural development.

The Applicant has now lodged an appeal against the refusal and with the submitted Statement of Case (SoC) has included a Retail Sequential Test Statement(RSTS). On this basis and continuing the argument that a retail impact assessment is not required, CL on behalf of the Appellant contends that RfR2 falls away (SoC, para 8.10).

*Review of the application documents*

The Council will maintain that the proposed retail development cannot be considered to represent 'small scale rural development' and instead should be assessed as an out of centre retail development though exactly which centre they are 'out of' is unclear.

Whilst the term 'small scale rural development' is not defined in the NPPF, the Glossary (Annex 2) does provide a definition of 'major development' which for non-residential development is a proposal providing over 1,000 sqm of more of additional floorspace, or a site area of 1 hectare or above. The appeal proposal exceeds both these thresholds and therefore needs to be considered as 'major development'.

It is also the case that this scale of retail floorspace is not consistent with what would be expected in a village environment. Neither the application documents nor the information submitted to date for the appeal provide any indication of how the proposed offer compares with that in other larger villages in the area, but the scale of the proposed development is significantly greater than one would normally expect in a relatively small village.

As a result, the site needs to be considered as out of centre in retail policy terms and assessed accordingly.

Policy 2 of the adopted Local Plan (LP) identifies four main towns where development should be focused, of which Sturminster Newton is the closest to Marnhull. Marnhull itself is defined as a larger village and is therefore one of the locations where the focus will be on meeting local needs.

Policy 11 makes it clear the economic development of the four main towns will be supported with the continued improvement of the town centres as the main focus for retail, leisure and other commercial activities. Development in the larger villages is supported where it meets the villages own local needs.

The retail hierarchy is set in Policy 12, which indicates that Blandford, Gillingham, Shaftesbury and Sturminster Newton are defined as town centres. No other centres and therefore this implies that all other settlements are outside of the retail hierarchy. This has implications for how the

sequential test is applied, but the Council's case is that compliance with the sequential test as set out in the NPPF and Policy 12 needs to be demonstrated.

Further, as is clearly set out in the Planning Practice Guidance (PPG), it is for the applicant to demonstrate compliance with the sequential test and failure to undertake a sequential assessment could in itself constitute a reason for refusing permission (PPG, para 011).

In terms of the omission of a retail impact assessment from the application, we consider that CL is correct that, as the retail and leisure elements of the proposal are under the NPPF threshold of 2,500 sqm gross and there is no specific lower threshold set in the LP (indeed, the 2,500 sqm threshold is referenced in para 6.82), then there is no requirement as a matter of strict policy to submit one. However, the impact of the retail element of the scheme is a material consideration, and as such, as a matter of substance, a retail impact assessment is required. The Council consider it very unusual that they have not done so, given how close to the threshold the proposed floorspace is given and the scale of development relative to the size of the settlement. In our experience most applicants would seek to assist the Council by preparing a proportionate impact assessment in similar situations. Indeed, case law would support our interpretation of Policy 12 (i) and (j) which by not stating a threshold requires a proportionate assessment of the case (as applicable to the scale and nature of the scheme).(Appendix 2)

However, it is important to note that the threshold solely relates to whether a retail impact assessment (RIA) can be required of the applicant and not to when impacts need to be considered by the Local Planning Authority ('LPA'). Retail impacts will be a consideration given the clear requirements of the NPPF that '*Planning ... decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation*' (NPPF, para 90).

It is also the case that allowing out of town developments will inevitably draw trade from existing locations, including town centres and, as such would be contrary to policies which seek to support these centres. The levels of impact that will result therefore need to be understood and, even if that does not result in a significant adverse impact being identified (in which case the application should be refused in accordance with the NPPF, para 95), the negative impacts of a development will need to be considered in any 'planning balance' (NPPF, para 11). These are all material considerations, regardless of whether the NPPF threshold of 2,500 sqm is met.

A Retail Technical Note (RTN) from Lichfields, which was submitted with the application.

The purpose of this document in terms of addressing planning policy is not clear. It seeks to justify the scale of retail development proposed and may have helped inform the development of the scheme. However, it does not consider either sequential or impact tests for the proposed out of town retail development. There are also some obvious flaws in the assumptions made and, fundamentally, no consideration as to whether the size of store proposed would attract a retail operator.

We will provide detailed comments on the document but at this stage would advise that concerns include, but are not limited:

- The use of a primary catchment area that extends to the outskirts of Sturminster Newton and Stalbridge (RTN, Figure 2.1);

- The assumption that the proposed development will be able to retain 60% of convenience expenditure within 0-2kms (RTN, para 2.35) and 45% of food & beverage expenditure (RTN, para 2.37);
- The assumption that all the new housing will be occupied by incomers to the area (RTN, para 2.9); and
- There is likely to be retailer interest in a convenience store unit of around 814 sqm net (RTN, para 1.3).

Based on these conclusions, it is considered that there is no justification for a significant increase in retail floorspace proposed in Marnhull, nor is there evidence that the proposal complies with sequential and retail impact policies. The Council will produce its own retail impact assessment and reserves the right to seek the costs of such from the appellant, given that this evidence ought to have been assembled by the appellant.

*A word about the appellant's statement of case (ASoC)*

In submitting the appeal, the Appellant has provided a sequential site assessment as well as their Statement of Case but remains of the view that a RIA is 'neither required nor justified' (ASoC, para 8.10) and that, because a sequential assessment has now been provided, RfR2 also falls away (ASoC, para 8.10).

Given we consider that retail impact needs to be considered, we disagree with this conclusion even if the sequential assessment were to demonstrate compliance with policy. However, for the reasons set out below, we do not consider that this is the case.

The ASoC also raises a number of matters which we consider will need to be the subject of a detailed response in due course, such as:

- The apparent confusion between the potential harm that the development may have on the surrounding town centres (the impact test) and the requirement for a sequential assessment (para 1.10, bullet 1);
- The suggestion of a policy tension with respect to the adopted local plan for Marnhull and national policy in terms of retail and town centre uses (para 1.11); and
- The failure to reference Policy 11 despite its inclusion in RfR2.

The appellant is seeking to suggest that a core element of the application is to deliver affordable housing (ASoC, para 2.1). However, the main housing element does not form part of the application for full planning permission and the full application only includes 2 residential units. If there is a viability issue, then the appellant has not made this clear.

*Retail sequential test statement (RSTS)*

The Council will provide a detailed review of the document in due course, but our initial review has raised a number of concerns that lead us to conclude that the assessment provided cannot be relied upon to demonstrate the necessary compliance with the sequential test.

We would also note that the key centre for consideration under the sequential test is Sturminster Newton, given it is proximity to Marnhull.

*The Council's statement of case on retail/commercial matters*

The Council's case on retail/commercial matters will address the following points:

1. Why the Council do not agree that the development proposed can be considered to be 'small scale rural development'. This will include indicating why the Retail Technical Note prepared by Lichfields and submitted with the application is flawed and as such cannot be relied upon to determine the scale of retail floorspace that can be supported by the local population (existing and proposed) at Marnhull

2. Why the use of conditions in this case cannot reduce the scale of development to a level that would be acceptable as such.

3. As a result the reasons why the Council is of the view that the retail element of the appeal proposal represents out of centre development and as such compliance with the sequential and impact tests set out in national and local planning policy needs to be demonstrated. As these were not submitted with the application the Council remain of the view that the reason for refusal on retail and town centre policy grounds remains valid given the advice in the PPG that it is for the applicant to demonstrate the necessary compliance with policy and failure to do so can itself be a reasons for refusal.

4. Whether the proposal complies with the sequential test. The Council is now in receipt of a Retail Sequential Test Statement and will be providing a detailed response to the Appellant on its content in due course. At the present time the Council is aware of a number of shortcomings with the document and remain of the view that compliance with the sequential test has not been demonstrated.

5. The Council will set out why they consider a retail impact assessment is required as set out in Policy 12 (i) and (j) In the absence of such an assessment the Council will show why the failure to demonstrate this could be a reason for refusal.

6. Assess the expected impacts of the development in order to provide the necessary information for the Inspector and rectify the unreasonable evidential deficiency left by the appellant. This will provide an indication of the scale of negative impacts on existing town centres. If the impacts are shown to be significantly adverse when considered in isolation, this would be a reason for refusal. Otherwise the negative impacts of the appeal proposal will need to be balanced against any positive benefits.

7. The relevance of Policy 11 will be explained, as, although it is referred to the reasons for refusal, it is not considered by the appellant.

8. The Council will provide an update on the Marnhull Neighbourhood Plan and supporting evidence.

9. The Council will also look to review whether village facilities have declined over time (ASoC, para 8.19) as no evidence of this is currently before the Inspector.

We will also consider

- The extent to which the other proposed uses in the centre are acceptable and the extent to which conditions may be required if the appeal is allowed, given that the Applicant's/Appellant's submissions indicate specific uses for some of the retail uses.

**Heritage assets**

*Council's case on matters relating to heritage assets*

The Council's case is that the proposed development would result in less that substantial harm to the setting of the grade I listed church of St Gregory, the grade II* listed Seniors Farmhouse and the Marnhull Conservation Area.

The setting of these assets includes the rural character of the landscape which surrounds and immediately abuts the historic core of the village and which provides these heritage assets with their open, agrarian setting. This would be considerably eroded by the proposed development. It is considered that both parcels of this development proposal would result in the encroachment of built form into land which has historically provided these assets with an open, rural setting and which underpins their prominent presence within the village and when viewed from the many public ways in the village and the wider surrounding countryside.

The appellant accepts that there will be less than substantial harm to the heritage assets set out in the reason for refusal , but the parties disagree on the extent of harm and on the weight to be given to any perceived public benefits the proposal has to offer.

Objective 2 of the adopted LPP1 is to conserve and enhance the historic and natural environment. With an up-to-date plan, the core spatial strategy as set out in LPP1 Policy 2 should be followed thereby conserving the historic environment from inappropriate development in the countryside that would result in harm to heritage assets if there is not an overriding need. LPP1 Policy 5 sets out that clear and convincing justification for any development that would cause harm to the significance of a designated heritage asset will be required however slight the change to its setting. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

The Council's assessment of setting of the relevant heritage assets for this case has followed England's The Setting of Heritage Assets (Historic Environment Good Practice Advice in Planning Note 3 (Second Edition)) (PN3). The Council's proof of evidence will follow in the same vein.

The formal classification for each designated asset, and associated degree of interest, is explained below:

- Grade I: Buildings of exceptional interest accounting for 2.5% of the national listed building portfolio (Historic England, 2024)
- Grade II*: Particularly important buildings of more than special interest accounting for 5.8% of the national listed building portfolio (Historic England, 2024)
- Conservation Area: An area of special historic or architectural interest, protected by legislation to preserve its character and appearance (RTPI, undated)

It is considered that the 'desirability of preserving' such assets should correspond with the potential impact and harm.

The Framework at Section 16 Conserving and enhancing the historic environment

- Para. 212 - *When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation*

*(and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.*

- Para. 214 - *Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.*

Significance, ascribed to building, setting and landscape, is recognised in Historic England's PN3 and had been addressed at the application stage in comments offered by Dorset Council's Conservation Officer, Landscape Officer, and Urban Design Officer. It should be noted that Officers comments are clear in both assessment and evaluation, and offer consistency, across each specialism, in identifying relational areas of impact and harm relevant to the process of heritage appraisal.

*Summary of heritage matters*

The core intention of the scheme neither seeks to conserve nor enhance the encompassing historic environment. It is considered that great weight must be given to protect affected designations which are considered highly significant and of local and national interest.

The public benefits of this scheme relate to retail development and housing both of which would be situated in the countryside outside of the settlement boundary to Marnhull and thereby contrary to the spatial strategy for the Council. These should be afforded very limited weight if the policies most important to decision-making are found to be up to date and there is no demonstrable overriding need.

To conclude, there is agreement that the proposed development would result in less than substantial harm to the significance of the relevant heritage assets. The Council bases its conclusion on the terms of formal classification which calculates impact on the premise of an undiluted threat of harm, to the highest category of national designation, protected by legislation.

## 10. Planning conditions and planning obligations

The Council will work proactively with the appellant to have a list of conditions for the Inspector prior to the proofs of evidence submissions.

It is acknowledged that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. The Council will work proactively with the appellant to address all of the necessary offsite impacts and secure contributions where they meet Reg 122 CIL tests with the aim of submitting a signed S106 obligation prior to the start of the public inquiry.

Appendix 1

Highway Authority Recommendation

**HIGHWAY AUTHORITY RECOMMENDATION**

**P/OUT/2023/02644**
**Land west of Church Hill and Land off Butts Close and Schoolhouse Lane, Marnhull**

**Appeal Reference: APP/D1265/W/24/3353912**

The Highway Authority has been notified of modifications to the appeal proposals by the Appellant (Chapman Lily Planning Ltd letter dated 12 November 2024). Two revised drawings and a supplemental report have been provided for consideration, as discussed below.

**Tess Square Proposed site layout plan no. 101 rev 3**

The revised drawing now shows that the 30-space school drop-off/overflow car park intended to serve St Gregory's Primary school will be accessed from the commercial car park to the north and that a dedicated pedestrian link will be provided to the rear of the school. The previously suggested vehicular access from this car park to Church Hill has been deleted, which overcomes one of the Highway Authority's safety concerns.

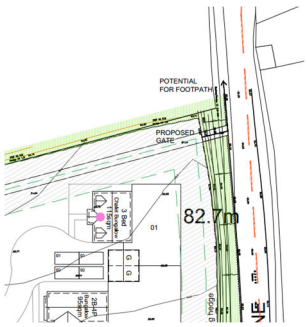
The Highway Authority accepts the methodology used and the consequent findings of the parking accumulation assessment provided within the highways response technical note.

The technical note has provided further information to address the previous concern raised regarding the suitability of Church Hill to cater for the additional traffic associated with the commercial development, in particular, large service vehicles. The Highway Authority is satisfied that this issue has now been fully considered and is not a matter of concern.

**Butts Close proposed site layout plan no. P201 rev 3**

The revised drawing shows that the footways have been removed from either side of the vehicular access onto Schoolhouse Lane to prevent pedestrian movements from the site to the east. This is considered to be acceptable subject to a wayfinding condition being imposed which will signpost the suitable linkages to the west of the site, through Butts Close.

It is noted that there is a pedestrian access retained at the northern corner of the frontage onto Schoolhouse Lane which would need to be removed from the development proposal:




A condition has been suggested to overcome this concern (see recommended conditions below).

The Highway Authority can confirm that the proposed access works on Butts Close are acceptable, as shown on Dwg No P201 Rev P3.

There are two key issues around sustainable transport. Mitigation needs to be conditioned and/or included in the s106 agreement before refusal reason 3 can be overcome and therefore make this application acceptable in transport policy terms.

## 1. Public Transport Improvements

### Bus Service Contribution

In the initial consultation response, the Highway Authority requested a financial contribution towards improving the local bus services. This has not been considered within the highways response technical note.

Paragraph 109 of the NPPF refers to significant development should be focused on locations which are or can be made sustainable. This can be achieved through limiting the need to travel and offering a genuine choice of transport modes.

Marnhull is served by the CR3 and CR4 bus services which operate 5 services a day (each direction), Monday to Friday. These services are supported by Dorset Council.

Dorset's Bus Service Improvement Plan (BSIP) seeks to introduce weekend services on the council supported core route network. A Saturday bus service through Marnhull will contribute to offering residents a genuine choice of transport modes as currently there is no weekend bus service.

The s106 should include reference to an appropriate financial contribution being made towards increasing the frequency of the existing bus service and to aid the establishment of a Saturday service.

Given the scale of the proposed residential development and the attractiveness of the proposed commercial offering at Tess Square, a bus service contribution of £52,952.88 (indexed linked) is sought to support and increase the frequency of the bus service that passes through Marnhull. This should be paid prior to the occupation of development. This figure is proportionately related to recent s106 agreements in the locale for bus service improvements.

### Bus Stop Infrastructure

There is currently a lack of bus stop infrastructure within Marnhull which can act as a barrier for public transport participation. Providing bus stop pole and flags with timetable information will make the bus a more attractive and easier to use for residents, contributing to key goals within Dorset's BSIP.

A pole and flag will be required at the following stops:

1. Mounters, Fingers Corner SW-bound
2. Mounters Finger Corner NE-bound
3. St Gregory's School W-bound
4. St Gregory's School E-bound
5. Pillwell W-bound

6. Pillwell E-bound

A financial contribution of £800 per pole and flag stop is requested (a total of £4,800 (indexed linked)).

**2. <u>Pedestrian connectivity</u>**

**North-south pedestrian connectivity**

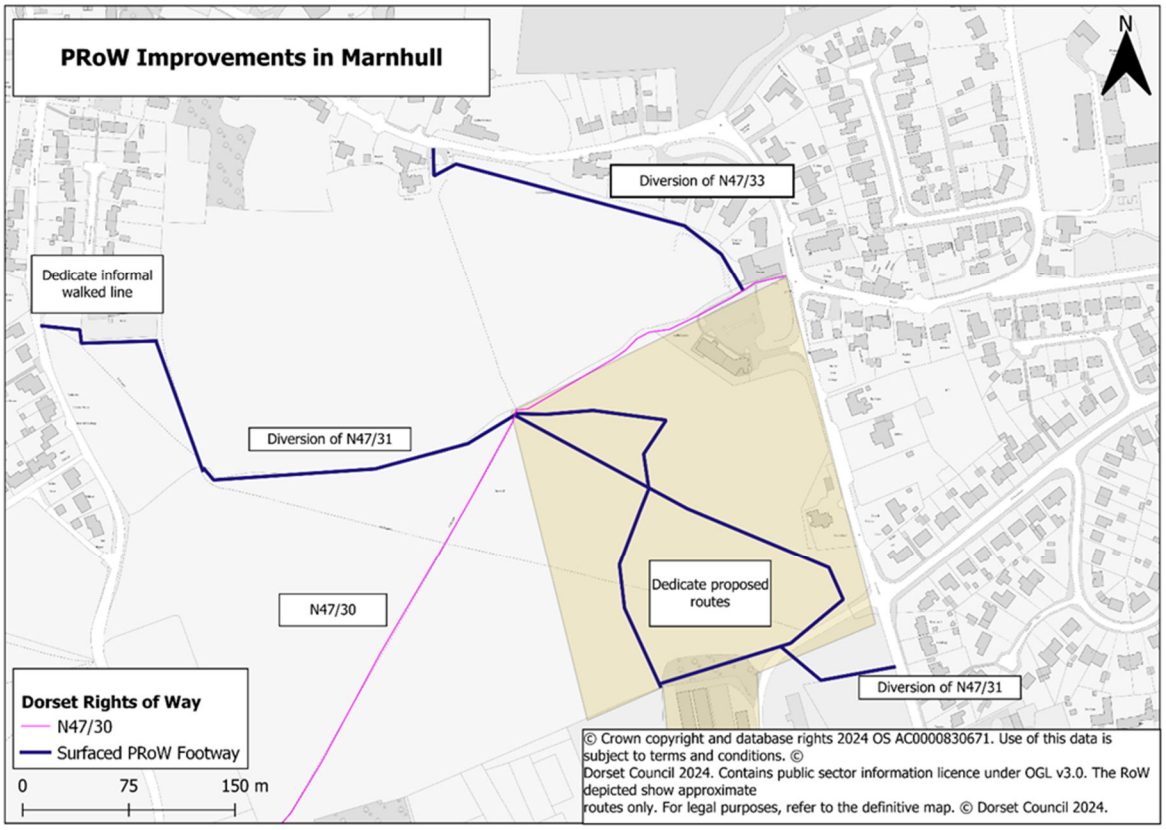
Referring to NPPF paragraph 109, to make Marnhull sustainable pedestrian connectivity within the village needs to be improved. The Tess Square development will attract trips from village residents. To ensure that residents have a genuine choice to walk to Tess Square, further PRoW improvements are needed. Currently, residents must walk on roads without footways, which creates conflict between road users and conflicts with NPPF policy 116.a and 116.c.

Paragraph 3.12 of the highways response technical note states that: *"Some Marnhull residents are likely to use active travel modes (walking/cycling) to the commercial development. It is also assumed a number of staff at the commercial site will be residents of Marnhull and are therefore likely to live within reasonable walking/cycling distance of the site which will reduce the parking demand at the site"*. However, currently many PRoW into the commercial site are unsurfaced and the roads have disrupted footways. This acts as barriers to active travel within the village.

The below improvements are considered necessary to improve pedestrian connectivity to Tess Square:

- Divert and surface N47/31 to the middle boundary to link up with the site's paths and remainder of N47/31 to the health centre. Cost - £18k for surfacing approximately 450m.
- Divert and surface N47/31 to the south of the site to exit Church Hill north of St Gregory's Church. Cost - £4k for surfacing approximately 90m.
- Divert and surface N47/33 to the north boundary to link up with health centre. Cost - £10k for surfacing approximately 250m.
- Dedicate and surface informal FP to west off Sackmore Lane. Cost - £0 for the dedication and £4k for surfacing approximately 90m.
- Dedicate the north/south site paths to connect through the application area. Cost - £0 for the dedication (already surfaced due to the development).
- Diversion costs: £4k for first diversion and £2k for each additional diversion. Three diversions required. Cost - £8k (if placed under one order).

The total PRoW upgrade costs are estimated to be £44,000 (indexed linked).




The PRoW upgrades should be surfaced to the below specifications:

- 2m wide footpaths
- Compacted and rolled stone surface, finish suitable for pushchairs/mobility vehicles
- 150mm deep of 40mm scalpings base layer, 50mm deep of 20mm to dust surfacing
- No stiles, pedestrian gates to BS 5709 2018, if required.

**School drop-off/pick-up area and path to St Gregory's Primary School**

The Highway Authority requests that the s106 contains a paragraph ensuring that the path to the school from the school drop/off-pick up point is maintained and accessible throughout the lifespan of the development.

If the Inspector is minded to grant this appeal, the following conditions are suggested for inclusion within the decision:

**<u>Tess Square development</u>**

1. *Before the development is occupied or utilised the access, geometric highway layout, turning and parking areas shown on Drawing Number 101 Rev P3 must be constructed, unless otherwise agreed in writing by the Planning Authority. Thereafter, these must be maintained, kept free from obstruction and available for the purposes specified.*
2. *Before the development is occupied or utilised the cycle parking facilities shown on Drawing Number 101 Rev P3 must have been constructed. Thereafter, these must be maintained, kept free from obstruction and available for the purposes specified.*

3. *No development must commence until details of the access, geometric highway layout, turning and parking areas have been submitted to and agreed in writing by the Planning Authority.*
4. *The development hereby permitted shall not be brought into use until a Delivery Management Plan has been submitted to and approved in writing by the Local Planning Authority. The approved Delivery Management Plan shall be adhered to thereafter. The Plan shall:*

- *specify the type, number and frequency of vehicles that will serve the site*
- *specify delivery route to and from the store*
- *specify delivery times outside of store opening hours or specify a method of delivery and customer control that reduces the risk of collision between delivery vehicles and pedestrians if delivery during store opening hours is unavoidable*

**Butts Close development**

5. *No development must commence until details of the access, geometric highway layout, turning and parking areas have been submitted to and agreed in writing by the Planning Authority.*
6. *No direct pedestrian access shall be formed from the site onto Schoolhouse Lane (the B3092).*
7. *Before the development is occupied or utilised the first 15.00 metres of the vehicle access, measured from the rear edge of the highway (excluding the vehicle crossing), must be laid out and constructed to a specification submitted to and approved in writing by the Local Planning Authority.*
8. *The development hereby permitted must not be occupied or utilised until a scheme showing precise details of the proposed cycle parking facilities is submitted to the Planning Authority. Any such scheme requires approval to be obtained in writing from the Planning Authority. The approved scheme must be constructed before the development is commenced and, thereafter, must be maintained, kept free from obstruction and available for the purpose specified.*
9. *Before the development hereby approved is occupied or utilised the following works must have been constructed to the specification of the Planning Authority:*
   *The proposed access arrangements and alterations to the existing highway as shown on P201 Rev P3 (or similar scheme to be agreed in writing with the Planning Authority).*
10. *Before the development hereby approved is occupied or utilised the visibility splay areas as shown on Drawing Number 106.0026-0008 Rev P01(Appendix C of the Transport Statement, April 2023) must be cleared/excavated to a level not exceeding 0.60 metres above the relative level of the adjacent carriageway. The splay areas must thereafter be maintained and kept free from all obstructions.*
11. *Prior to first occupation of each phase, a 'way-finding strategy' to include directional signs for all classification routes, street naming and numbering, street name plates and a phasing strategy for implementation, shall be submitted to and agreed by the local planning authority. The 'way-finding strategy' shall be implemented in its entirety against the phasing strategy and thereafter maintained.*

**The whole development**

12. *Before the development hereby approved commences a Construction Traffic Management Plan (CTMP) must be submitted to and approved in writing by the Planning Authority. The CTMP must include:*

- *construction vehicle details (number, size, type and frequency of movement)*
- *a programme of construction works and anticipated deliveries*
- *timings of deliveries to avoid, where possible, peak traffic periods*
- *a framework for managing abnormal loads*
- *contractors' arrangements (compound, storage, parking, turning, surfacing and drainage)*
- *wheel cleaning facilities*
- *vehicle cleaning facilities*
- *a scheme of appropriate signing of vehicle route to the site*
- *a route plan for all contractors and suppliers to be advised on*
- *temporary traffic management measures where necessary*

*The development must be carried out strictly in accordance with the approved Construction Traffic Management Plan.*

**Steve K Savage**
**Transport Development Manager**
**Highways**
**Dorset Council**

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Dorset Council

Appendix 2

Cherkley Campaign Ltd) v Mole Valley DC [2014] EWCA Civ 567 [2014] 2 EGLR 98 at §16

Neutral Citation Number: [2014] EWCA Civ 567
Case Nos: C1/2013/2619, 2622, 3551 and 3781

**IN THE COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**
**ADMINISTRATIVE COURT**
**Mr Justice Haddon-Cave**
**[2013] EWHC 2582 (Admin)**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday 7th May 2014

**Before :**

**LORD JUSTICE RICHARDS**
**LORD JUSTICE UNDERHILL**
and
**LORD JUSTICE FLOYD**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

| | |
|---|---|
| **The Queen on the application of Cherkley Campaign Limited** | **Claimant/ Respondent** |
| **- and -** | |
| **Mole Valley District Council** | **Defendant/ Appellant** |
| **and** | |
| **Longshot Cherkley Court Limited** | **Interested Party/ Appellant** |

- - - - - - - - - - - - - - - - - - - - -

(Transcript of the Handed Down Judgment of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

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**James Findlay QC** (instructed by **Sharpe Pritchard**) for the **Appellant**
**Douglas Edwards QC and Sarah Sackman** (instructed by **Richard Buxton Solicitors**) for the **Respondent**
**Christopher Katkowski QC and Robert Walton** (instructed by **Berwin Leighton Paisner LLP**) for the **Interested Party**

Hearing dates : 11-12 March 2014

- - - - - - - - - - - - - - - - - - - - -

Judgment

**Lord Justice Richards :**

1. This appeal concerns the grant of planning permission for the development of Cherkley Court and land on the Cherkley Estate near Leatherhead, Surrey, into a hotel and spa complex and an exclusive 18 hole golf course. The whole estate is within the Surrey Hills Area of Great Landscape Value ("the AGLV") and part of the proposed golf course is within the Surrey Hills Area of Outstanding Natural Beauty ("the AONB"). The planning permission was granted on 21 September 2012 by the local planning authority, Mole Valley District Council ("the Council"), to Longshot Cherkley Court Limited ("Longshot"). Cherkley Campaign Limited ("Cherkley Campaign") brought a claim for judicial review to challenge the grant of planning permission. The claim succeeded before Haddon-Cave J who by order dated 22 August 2013 quashed the planning permission. The Council and Longshot both bring appeals against that order, with permission granted by Sullivan LJ. They also appeal against Haddon-Cave J's costs order dated 15 November 2013, but the costs appeals are contingent on the outcome of the main appeals.

2. The facts are set out at paras 5 to 27 of the judgment of Haddon-Cave J. Rather than repeat them here, I will refer to salient features as necessary when considering the issues on the appeal. It is, however, relevant to note at this stage that the decision to grant permission was made by the Council's Development Control Committee ("the Committee") by a bare majority of 10 to 9 after a prolonged decision-making process and that it was contrary to the recommendation in the officers' reports. The grant of permission was accompanied by a lengthy summary of reasons, drafted by the officers, which is quoted in full at para 27 of the judgment below.

3. The issues in the appeal can be considered under the headings of (1) development plan policy, (2) landscape impact, (3) Green Belt policy and (4) reasons.

4. I should say at once that Haddon-Cave J examined the case with great thoroughness and style. He was not at all impressed by the arguments in favour of a golf course development in this area of outstanding natural beauty and/or great landscape value and he expressed himself in strong terms in concluding that the decision of the majority of the Committee suffered from error of law, irrationality and inadequacy of reasons. After initial reading of his judgment I approached the appeals with a disinclination to interfere with it. In the end, however, I have been persuaded by the submissions on behalf of the appellants that he was wrong on each of the issues on which he found against them. In those circumstances I have concluded that his orders cannot stand. My reasons for that conclusion are set out below.

***Development plan policy***

*The relevant policy*

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") required the Council to determine the planning application in accordance with the development plan unless material considerations indicated otherwise. By section 54(1), the development plan included "the provisions of the local plan … for the time being in operation in the area".

6. The Mole Valley Local Plan ("the Local Plan"), adopted in October 2000 under the predecessor legislation, contained a section on golf courses. The section comprised "Policy REC12 – Development of Golf Courses" and supporting text (paragraphs 12.70 to 12.81), as follows:

> "**GOLF COURSES**
>
> 12.70 There are seven established golf courses in the District concentrated principally around Dorking and Leatherhead. In the Newdigate area a new course has been opened in recent years and another permitted. More generally this part of Surrey is very well served with golf courses. According to the recognised standards of provision there is no overriding need to accommodate further golf courses in the District.
>
> 12.71 In considering proposals for new courses, the protection of the District's Green Belt and countryside will be of paramount importance. In this regard it will be important to ensure that a proposal is compatible with retaining and where possible enhancing the openness of the Green Belt and rural character of the countryside. Applicants proposing new courses will be required to demonstrate that there is a need for further facilities.
>
> 12.72 New courses are likely to have an impact on the District's landscape because of their extensive size, formal appearance, considerable earth works and new buildings. The Council will seek to ensure that proposals for golf courses do not reduce the distinctiveness and diversity of the District's landscape. The Council is particularly concerned about the effect on the special landscape qualities of the Surrey Hills Area of Outstanding Natural Beauty and the Area of Great Landscape Value and future golf course proposals will be directed away from these areas of high landscape quality.
>
> **POLICY REC12 – DEVELOPMENT OF GOLF COURSES**
>
> Proposals for new golf courses and extensions to existing courses will be considered against the following criteria:
>
> 1. the impact of the course on the landscape, archaeological remains and historic gardens, sites which are important for nature conservation and identified in Policies ENV9, ENV10, ENV11, ENV12 and ENV13, and the extent to which the proposal makes a positive contribution to these interests;
>
> 2. the extent of any built development and facilities and their impact on the character and appearance of

the countryside;

3. courses will not be permitted on Grade 1, Grade 2 or Grade 3a agricultural land;

4. the course should have safe and convenient vehicular access to an appropriate classified road. Proposals generating levels of traffic that would prejudice highway safety or cause significant harm to the environmental character of country roads will not be permitted;

5. the extent to which public rights of way are affected and whether any provision is proposed for new permissive rights of way;

6. the provision of adequate car parking which should be discreetly located or screened so as not to have an adverse impact on the character and appearance on the countryside.

In considering proposals for new golf courses, the Council will require evidence that the proposed development is a sustainable project without the need for significant additional development in the future, such as hotels or conference facilities.

Proposals for new golf courses should be designed to respect the local landscape character. New golf courses in the Surrey Hills Area of Outstanding Natural Beauty and the Area of Great Landscape Value will only be permitted if they are consistent with the primary aim of conserving and enhancing the existing landscape.

12.73 In determining proposals for golf courses and ancillary development, the Council will have regard to the Surrey County Council's guidelines for the development of new golf facilities in Surrey. Account will also be taken of the existing and proposed provision of courses in the area …."

7. Part of Cherkley Campaign's case before the judge was that the Committee majority (i) failed to apply correctly the requirement in paragraph 12.71 for "need" to be demonstrated and (ii) failed to consider whether the golf course could be "directed away" from the AONB and AGLV in accordance with paragraph 12.72. The judge accepted both arguments: he dealt with need at paras 51-123 of his judgment and with directing away at paras 124-130. In considering the appellants' challenge to those findings I will follow the pattern of the submissions by concentrating primarily on need and coming back at a later stage to deal briefly with directing away.

*Whether there was a requirement to demonstrate need*

8. The first issue in relation to need is the status and effect of the statement in paragraph 12.71 of the Local Plan that "Applicants proposing new courses will be required to demonstrate that there is a need for further facilities". That issue turns on (i) the relationship between Policy REC12 and the supporting text and (ii) the effect of the 2004 Act and a "saving direction" made under it in respect of Policy REC12.

9. It is helpful to consider first the relevant statutory provisions and guidance at the time when the Local Plan was adopted. Section 36 of the Town and Country Planning Act 1990, in the version in force at the time, provided:

> "36 … (2) A local plan shall contain a written statement formulating the authority's detailed policies for the development and use of land in their area.
>
> …
>
> (6) A local plan shall also contain –
>
> (a) a map illustrating each of the detailed policies; and
>
> (b) such diagrams, illustrations or other descriptive or explanatory matter in respect of the policies as may be prescribed,
>
> and may contain such descriptive or explanatory matter as the authority think appropriate."

10. More specific requirements were laid down by the Town and Country (Development Plan) (England) Regulations 1999. In particular, regulation 7 provided:

> "**7. Reasoned justification**
>
> (1) A local plan … shall contain a reasoned justification of the policies formulated in the plan.
>
> (2) The reasoned justification shall be set out so as to be readily distinguishable from the other contents of the plan."

11. Annex A to Planning Policy Guidance 12 ("PPG12") contained guidance on content and layout:

> "23. **The local plan and UDP Part II** consists of a written statement and a map ('the proposals map'). The written statement should include the authority's policies and proposals for the development and use of land and, in particular, those which will form the basis for deciding planning applications and determining the conditions attached to planning permissions. As with structure plans, policies and proposals should be clearly and unambiguously expressed, with sufficient

> precision to enable them readily to be implemented and performance measured.
>
> 24. The written statement should also include a reasoned justification of the plan's policies and proposals. A brief and clearly presented explanation and justification of such policies and proposals will be appreciated by local residents, developers and all those concerned with development issues. The reasoned justification should only contain an explanation behind the policies and proposals in the plan. It should not contain policies and proposals which will be used in themselves for taking decisions on planning applications. To avoid any confusion, the policies and proposals in the plan should be readily distinguished form the reasoned justification (for example, by the use of a different typeface)."

12. The approach adopted within the Local Plan itself is consistent with that guidance. Paragraph 1.10 of the Local Plan states:

> "1.10 The Plan's policies are printed in bold type and boxed within a shaded background to distinguish them from the supporting text which provides a reasoned justification for each policy and indicates how it will be implemented by the Council. To interpret the policies fully, it is necessary to read the supporting text."

Policy REC12 is one of the policies there referred to: it is boxed, with a heading in bold text, to distinguish it from the supporting text.

13. The material to which I have referred indicates the relationship between Policy REC12 and the supporting text at the time when the Local Plan was adopted. But it is also necessary to take account of a subsequent change in the statutory regime. The 2004 Act introduced a new development plan making process under which local plans were to be replaced. Paragraph 1 of schedule 8 provided for a three year transitional period from 28 September 2004 after which existing local plans *ceased to have effect*, subject to a power in the Secretary of State to direct "for the purposes of such *policies* as are specified in the direction" (emphasis added) that the old policies should remain in effect until replaced by new policies. The Secretary of State made such a saving direction in respect of certain policies in the Local Plan, including "Policy REC12".

14. In the light of the above, the appellants submit that:

i) Even leaving aside the saving direction, the Local Plan contained no requirement to demonstrate need. The relevant policy was Policy REC12 and on its proper construction it contained no such requirement. Although paragraph 12.71 referred to such a requirement, the paragraph was not part of the policy and its wording was not carried through into the policy.

ii) In any event the saving direction saved only Policy REC12, not paragraph 12.71 or the rest of the supporting text; and the only relevant part of the Local

Plan that continued in force on the expiry of the three year transitional period was Policy REC12.

15. I agree with the first submission and also, subject to a qualification, with the second.

16. Leaving aside the effect of the saving direction, it seems to me, in the light of the statutory provisions and the guidance, that when determining the conformity of a proposed development with a local plan the correct focus is on the plan's detailed *policies* for the development and use of land in the area. The supporting text consists of *descriptive and explanatory matter* in respect of the policies and/or a *reasoned justification* of the policies. That text is plainly relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy. I do not think that a development that accorded with the policies in the local plan could be said not to conform with the plan because it failed to satisfy an additional criterion referred to only in the supporting text. That applies even where, as here, the local plan states that the supporting text indicates how the polices will be implemented.

17. In this case, therefore, the correct focus is on the terms of Policy REC12. That policy contains no requirement to demonstrate need. It sets out six criteria against which proposals for new golf courses will be considered, none of which relate to need. It provides in addition that the Council will require evidence that the proposed development is a *sustainable* project without the need for significant additional development in the future. It also provides that new golf courses in the AONB and the AGLV will only be permitted if they are consistent with the primary aim of *conserving and enhancing* the existing landscape. None of those matters can be equated with or involves a requirement to demonstrate need and in my view no such requirement can be read into them. The policy must of course be read in the light of the supporting text, given the statutory role of that text as descriptive and explanatory matter and/or reasoned justification for the policy, and also bearing in mind the statement in paragraph 1.10 of the Local Plan that the text indicates how the policy will be implemented by the Council. But making all due allowance for the role thereby performed by paragraph 12.71, I do not see how the paragraph can provide a basis for reading a need requirement into the policy. For whatever reason, the reference to a requirement to demonstrate need was not carried over into the terms of the policy. Nor can paragraph 12.71 operate independently to impose a policy requirement that Policy REC12 does not contain.

18. The relevant provisions of the 2004 Act and the saving direction made under it serve to underline rather than to alter the position as I see it. Subject to the saving direction, the Local Plan ceased to have effect at the end of the transitional period; and the effect of the direction was to save only the *policies* referred to in it, specifically including Policy REC12. It follows that the relevant question when considering the conformity of the proposed development with the Local Plan after the expiry of the transitional period must be whether the development is in accordance with saved Policy REC12. I do not accept, however, the appellants' submissions that the effect of the statute was to blue-pencil the supporting text on the expiry of the transitional period, leaving in place only the text of the policy, so that the policy fell to be interpreted thereafter without regard to the supporting text. To blue-pencil the supporting text would risk altering the meaning of the policy, which cannot have been the legislative intention. It seems to me that the true effect of the statutory provisions was to save not just the

bare words of the policy but also any supporting text relevant to the interpretation of the policy, so that the policy would continue with unchanged meaning and effect until replaced by a new policy. The resulting position in terms of relationship between the saved policy and its supporting text is therefore the same as it was prior to the 2004 Act and the saving direction.

19. The judge took a different view of the effect of paragraph 12.71. He referred at paras 79-81 of his judgment to various competing constructions of what was saved pursuant to a direction under the 2004 Act that specified "policies" should remain in effect on the expiry of the transitional period. The first, which he rejected, was that "policies" referred only to the wording in the policy box. The second was that "policies" included any illustrative map or reasoned justification and any other descriptive or explanatory matter. The third was that "policies" had a narrow meaning, referring to the wording in the policy box, but on the basis that regard could be had to any map or reasoned justification or other descriptive or explanatory matter when interpreting or implementing the policy. He said that it probably did not matter which of the second or third constructions was correct but the third was probably to be preferred. He concluded at para 87 that the saving direction had the effect in law of preserving all the supporting text to Policy REC12, so that appropriate resort could be had to it when interpreting and applying the policy. I would reject the second construction but would accept the third construction. To that limited extent I agree with the judge. I do not agree, however, with the way in which he went on to use the supporting text in the interpretation of the policy.

20. The judge picked this point up later in his judgment, in a passage at paras 104-106 on the "efficacy of supporting text". He said there that if the second construction of the "policies" saved was correct, the supporting text would presumably stand *pari passu* with the wording in the policy box and be of equal efficacy: it was all to be treated as "policy". If the third construction was correct, so that the "policy" was the wording in the box but resort could be had to the supporting text in order to interpret the policy, the effect in law of paragraph 12.71 was in his view as follows:

> "105. In my judgment, it matters not that the wording '*... applicants will be required to demonstrate that there is a need for further [golf] facilities*" appears outside the policy box rather than inside the box. Paragraph 1.10 [of the Local Plan] provides a perfectly rational explanation for the role of the "*supporting text*" outside the box, namely to provide a "*reasoned justification*" for the policies and indicate "*how*" policies will be implemented by the Council, and further states that it is necessary to read the "*supporting text*" in order "*to interpret the policies fully*". It matters not that the requirement to demonstrate "*need*" could equally well have featured in the box and that given the strictures of paragraph 24 of Annex A of PPG12 (that "*the reasoned justification ... should not contain policies and proposals that will be used in themselves for taking decisions on planning applications*") it might have been preferable if it had. It also matters not that Policy REC12 might have been more conventionally drafted …. Reading the wording inside and outside the box as a whole, the intention of

> the framers of the policy is clear: given (a) the apparent sufficiency of golf courses in this part of Surrey and (b) the need to protect the special landscape of the Surrey Hills *etc.*, applicants will have to demonstrate a "*need*" for further such facilities and proposals for new golf courses will be considered against certain listed criteria. As stated above, in the light of (a) and (b), it might reasonably be said that the requirement to demonstrate the "*need*" for further such facilities is simply making explicit what is implicit."

21. It should already be clear why I disagree with that reasoning. The policy is what is contained in the box. The supporting text is an aid to the interpretation of the policy but is not itself policy. To treat as part of the policy what is said in the supporting text about a requirement to demonstrate need is to read too much into the policy. I do not accept that such a requirement is implicit in the policy or, therefore, that paragraph 12.71 makes explicit what is implicit. In my judgment paragraph 12.71 goes further than the policy and has no independent force when considering whether a development conforms with the Local Plan. There is no requirement to demonstrate need in order to conform with the Local Plan either in its original form or as saved.

22. It is true that the Council proceeded in practice on the basis that there was a policy requirement to demonstrate need. That was because the officers' report, by reference to the supporting text in paragraph 12.71, treated Policy REC12 as imposing such a requirement. As regards the application of the test, the officers' view was that there was no proven need for additional golf facilities. The majority of the Committee, however, took a different view on that issue. Their summary of reasons for the grant of planning permission included the statement that "the terms of Mole Valley Local Plan policy REC12 and its supporting text were considered to have been met in that a need for the facilities had been demonstrated …". I will come back to this later. For present purposes it suffices to say that if on the proper interpretation of Policy REC12 there was no requirement to demonstrate need, nothing turns on the fact that the Council proceeded on the basis that there was such a requirement but concluded that it was satisfied.

23. The judge records at para 53 of his judgment that it was initially accepted by all parties at the permission hearing and on the first day of the substantive hearing before him that Longshot had to demonstrate a need for further golf facilities in the particular location pursuant to Policy REC12 and that the issue was simply whether the Council had properly interpreted the requirement of need in this context and whether such a need had reasonably been identified. But Mr Katkowski QC, counsel for Longshot, "pulled a couple of surprise clubs out of his bag" on the second day of the substantive hearing and sought to argue that (1) the requirement in paragraph 12.71 to demonstrate need amounted to "policy" rather than "reasoned justification" and accordingly fell foul of paragraph 24 of Annex A to PPG 12 (see para 10 above) and was unlawful and of no effect, and (2) paragraph 12.71 had not been, and was not capable of being, saved by the Secretary of State's direction and therefore no longer existed in law. Mr Findlay QC, for the Council, adopted both of Mr Katkowski's new submissions. They were strongly resisted by Mr Edwards QC on behalf of Cherkley Campaign. In the event neither submission commended itself to the judge. The first submission has not been renewed before us. The second has been renewed, in part at

least, and has been considered above. It seems to me, however, that the way in which the case was argued before the judge distracted attention from the fundamental question whether Policy REC12, properly interpreted with due regard to the supporting text, required need to be demonstrated. That question was central to the argument before us; and for the reasons I have given I would answer it in the negative.

24. I should mention that the judge took the view that even if a requirement to demonstrate need was not part of the policy matrix under the Local Plan, "the requirement to demonstrate '*need'* in paragraph 12.71 is, at the very least, a material consideration" (para 81 of his judgment; the same point seems to be reflected in part of para 88). I respectfully disagree with that view. I accept of course that need can in principle arise as a material consideration, in particular where it is relied on in support of a departure from policy; but to the extent that the issue of need was canvassed in this case, it was in the context of a particular (and in my view mistaken) understanding of the policy rather than as a justification for a departure from policy. There is no overriding test of need; and if the relevant policy of the Local Plan did not require an applicant for a new golf course to demonstrate a need for further facilities, I do not think that the circumstances were such as to give rise to such a requirement through the route of material considerations.

*The meaning of "need"*

25. If my analysis so far is correct, it is unnecessary to go on to consider the judge's further findings as to the meaning of "need" and whether the majority of the Committee could rationally have concluded that a need had been demonstrated. I think it helpful to deal with those issues, however, since the points were fully argued and my conclusions in relation to them provide an alternative basis for my overall conclusion that the judge was wrong to accept the case advanced by Cherkley Campaign on the issue of need.

26. At paras 89-106 of his judgment the judge engaged in an elaborate examination of the meaning of "need" in paragraph 12.71 of the Local Plan, looking at dictionary definitions and at the general and specific context, and identifying both a geographical and a qualitative component. He referred to a submission for the Council that it was sufficient to show a need for the golf course in the sense that it would be sustainable and not require non-golfing activities to subsidise it; and a submission for Longshot that it was sufficient that an applicant could demonstrate a demand for a new golf course in the sense of requisite financial backing and membership for it. He concluded:

> "102. I reject Mr Findlay QC and Mr Katkowski QC's constructions of the word '*need*'. They are inimical to the philosophy of planning law. They run counter to the specific context in which the word appears in the Mole Valley Local Plan. They do not accord with common sense. Their approach would be recipe for a planning free-for-all.
>
> 103. In my judgment, the word '*need'* in paragraph 12.71 means '*required*' in the interests of the public and the community as a whole, i.e. '*necessary*' in the public interest

> sense. '*Need*' does not simply mean '*demand*' or '*desire*' by private interests. Nor is mere proof of '*viability*' of such demand enough. The fact that Longshot could sell membership debentures to 400 millionaires in UK and abroad who might want to play golf at their own exclusive, 'world class', luxury golf club in Surrey does not equate to a '*need*' for such facilities in the proper public interest sense. Paragraph 12.71 in the Local Plan requires applicants proposing new golf course in the Mole Valley to demonstrate that further golf facilities are '*necessary*' in this part of Surrey in the interests of the public and community as a whole."

27. It is common ground that in relation to the construction and application of planning policy statements the court should be guided by the principles summarised by Lord Reed in *Tesco Stores v Dundee City Council* [2012] UKSC 13, at paras 18-21. Lord Reed referred to considerations suggesting that in principle such policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context. But he said that they should not be construed as if they were statutory or contractual provisions. Development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their judgments can only be challenged on the ground that it is irrational or perverse. Nevertheless planning authorities cannot make the development plan mean whatever they would like it to mean. The distinction that Lord Reed drew between interpretation and application is illustrated by the way he described the particular issue in that case:

> "21. A provision in the development plan which requires an assessment of whether a site is 'suitable' for a particular purpose calls for judgment in its application. But the question whether such a provision is concerned with suitability for one purpose or another is not a question of planning judgment: it is a question of textual interpretation, which can only be answered by construing the language used in its context. In the present case, in particular, the question whether the word 'suitable', in the policies in question, means 'suitable for development proposed by the applicant', or 'suitable for meeting identified deficiencies in retail provision in the area', is not a question which can be answered by the exercise of planning judgment: it is a logically prior question as to the issue to which planning judgment requires to be directed."

28. I am satisfied that, contrary to a submission by Mr Findlay, the exercise engaged in by the judge in the present case was one of interpretation, not application, of the statement in paragraph 12.71 that applicants proposing new golf courses "will be required to demonstrate that there is a need for further facilities". It seems to me, however, that in holding that it required applicants to demonstrate that further golf facilities were "'*necessary*' in this part of Surrey in the interests of the public and the

community as a whole" he adopted an unduly exacting and narrow interpretation of that statement. The word "need" has a protean or chameleon-like character, as Mr Findlay and Mr Katkowski respectively submitted, and is capable of encompassing necessity at one end of the spectrum and demand or desire at the other. The particular meaning to be attached to it in paragraph 12.71 depends on context. The first and most obvious point to make about context is that Policy REC12 itself contains nothing to support the judge's exacting interpretation. The policy's requirement of evidence that the proposed development is a "sustainable" project without the need for significant additional development in the future is more consistent with a meaning at the other end of the spectrum, i.e. that there is sufficient demand for the project to be sustainable. The policy's reference to a primary aim of conserving and enhancing the existing landscape does not take this point any further. As to the immediate context provided by paragraphs 12.70 to 12.72, the most relevant consideration is the statement in paragraph 12.70 that "According to the recognised standards of provision there is no overriding need to accommodate further golf courses in the District". The point there being made appears to be that there is no necessity for further golf courses. But the very fact that, against that background, paragraph 12.71 leaves it open to applicants to demonstrate a need for further facilities suggests that "need" is being used in a different and less exacting sense in paragraph 12.71. Overall I take the view that if any need requirement is to be read into the policy by reference to paragraph 12.71, "need" is to be understood in a broad sense so that the requirement is capable of being met by establishing the existence of a demand for the proposed type of facility which is not being met by existing facilities.

29. In making his finding as to meaning the judge placed emphasis on the general context, namely "the broad horizon of planning law itself" and the fact that "the *raison d'etre* of planning law is the regulation of the private use of land in the public interest" (para 96 of his judgment). He referred back to para 2, where he said this:

> "… The developer argued that proof of private '*demand*' for exclusive golf facilities equated to '*need*'. This proposition is fallacious. The golden thread of public interest is woven through the lexicon of planning law, including into the word '*need*'. Pure private '*demand*' is antithetical to public '*need*', particularly very exclusive private demand. Once this is understood, the case answers itself …."

Thus his reasoning appears to have been that because planning control is exercised in the public interest, "need" must relate to the interests of the public and/or the community as a whole. I respectfully disagree with that reasoning. I see no reason in principle why a planning policy should not lay down a requirement of need which is capable of being met by a private demand for the facility in question, including a demand that arises outside the local community or area, as in the case of an elite facility catering for a national or even global market. It is not inimical to the philosophy of planning law to lay down such a requirement.

30. Accordingly, I accept the case for the appellants that if, contrary to my primary finding, Policy REC12 is to be read as containing a need requirement, it was an unexacting requirement and was capable in principle of being met by demonstrating an unmet demand for an elite facility of the type proposed.

*Whether the Council's conclusion on need was rational*

31. The officers' report informed members of the Committee that there was sufficient capacity in existing golf courses to provide for new members wishing to play the sport locally. It went on to explain that the proposed development was targeting the very highest end of the golf market, with exclusive membership sold at a cost that reflected the 5 star facilities. The applicant did not see it as competing for membership with surrounding 2, 3 and 4 star courses. Its financial model included a significant proportion of membership coming from overseas customers who would also use the hotel, and there was already a waiting list of prospective members. The report continued:

> "The applicant argues that need is not an issue and that they are operating within a very specific range of the golf market. Policy REC12 does not draw a distinction between different categories of golf provision. It was written to protect the countryside, particularly sensitive landscapes such as Cherkley, from a proliferation of golf courses. The issue of need is therefore relevant whatever the golf model and market being targeted.
>
> There is no proven need for additional golf facilities from the information available to the Council and the applicant has not indicated otherwise, other than to state that they can sell their product to a targeted market. It might, in any case, be reasonable to judge that the 'high end' market could be catered for in a less sensitive location or where there is an existing ailing course that can be reinvigorated to provide the sort of facilities and course that the membership would be seeking but in a less sensitive location."

32. That passage is far from clear. Whilst saying that there is no proven need for additional golf facilities, it appears to acknowledge that the applicant had put forward a case of need in the sense that the development would cater for a "high end" market; a case which the report meets by making the *different* point that such a market could be catered for in a less sensitive location.

33. The majority of the Committee dealt with the issue in the following paragraph of their summary of reasons for the grant of planning permission:

> "The development was considered to provide opportunities to meet a need for recreation facilities in the countryside and the applicant had been able to demonstrate in the supporting documents, such as the 'Report on Viability of Golf at Cherkley' and the 'Hotel Viability Study', that they would be able to secure enough interest in the facilities to make it viable in the short and long term. Therefore, the terms of Mole Valley Local Plan policy REC12 and its supporting text were considered to have been met in that a need for the facilities had been demonstrated and the character of the countryside could

be safeguarded even within and adjacent to the Area of Outstanding Natural Beauty …."

34. At paras 118-121 of his judgment the judge found that in that passage the majority of the Committee had failed properly to interpret or understand the true meaning of the word "need" and had misdirected themselves in law in various respects. At para 122 he found that in any event the majority's decision to grant planning permission for further golf facilities at Cherkley was perverse; it simply "*does not add up"*; there was no evidence upon which the majority could properly base a conclusion that there was a need "in the public interest sense" for further golf facilities in this part of Surrey.

35. Those findings were all based on a view as to the meaning of "need" with which, as indicated above, I disagree. If in this context "need" has the broader meaning that I favour, so that it can in principle be demonstrated by evidence of an unmet demand for the type of facility proposed, then in my view the summary of reasons given by the majority of the Committee for finding that need had been demonstrated discloses no error of law and the finding itself was reasonably open on the material available to members. I do not accept submissions by Mr Edwards that the reasons simply fail to address the question of need for a further facility or that they wrongly equate need with viability or sustainability. I also reject his submission that the material before the Committee, which included Longshot's planning statement and briefing note, provided insufficient evidence of unmet demand to enable the majority rationally to conclude that need had been demonstrated. I concentrate on the material before the Committee because that is clearly the basis on which the rationality of the majority's conclusion must be assessed. A further, though minor, concern about the judge's analysis is that he had regard to material that was not before the Committee (see para 111 of his judgment).

*The issue of "directing away"*

36. A separate issue arising in relation to the Local Plan concerns the statement in paragraph 12.72 that future golf course proposals "will be directed away" from the AONB and AGLV. The judge stated at para 126 of his judgment that this was expressed in "unequivocal mandatory terms" and was a requirement and, moreover, a material consideration. He went on to say that there was little evidence that the majority of the Committee properly addressed their mind to the requirement, and it appeared that they failed to heed the officers' advice that "it is reasonable to conclude that the golf course and its associated facilities could be provided in another location where the landscape is less sensitive and important". It was false to assume that it was necessary to locate a hotel and spa at Cherkley or that Cherkley was the only place where such combined facilities should be located in England. The reasons of the majority entirely failed to address the question of whether the golf course should be directed away from the designated areas. Accordingly he found that "the Council majority further erred in law in that they failed, properly or at all, to consider the policy requirement or material consideration in paragraph 12.72 that the golf course and its associated facilities could be provided in another location where the landscape was less sensitive and important".

37. The appellants' arguments on this issue track certain of the points already considered in relation to the issue of need. It is submitted that the judge was wrong to treat the supporting text in paragraph 12.72 as a mandatory policy requirement that golf

courses be directed away from the AONB and AGLV. Policy REC12 includes no such requirement, and no such requirement can be read into it by reference to the supporting text: on the contrary, Policy REC12 contemplates that new golf courses can be permitted in those areas "if they are consistent with the primary aim of conserving and enhancing the existing landscape". Paragraph 12.72 had no independent policy status even in the Local Plan as originally drafted, and in any event only Policy REC12 itself was saved by the saving direction under the 2004 Act.

38. I accept those submissions, for essentially the same reasons as I have accepted the appellants' submissions to the effect that there was no requirement to demonstrate need. I take the view that "directing away" was not a policy requirement of the Local Plan and that in the absence of a policy requirement the reference to it in paragraph 12.72 did not convert it into a material consideration. Policy REC12 contained provisions aimed specifically at the protection of the landscape. In my view those provisions were taken properly into account by the majority of the Committee, as will be explained when I move to the main landscape issues. No error of law is disclosed by the absence of reference to "directing away" in the summary of reasons.

***Landscape impact***

39. I turn to consider further issues that arise in relation to landscape impact.

40. The summary of the majority's reasons for granting planning permission stated that the development had been assessed against, *inter alia*, Policy REC12 and the National Planning Policy Framework ("NPPF") and was considered to conform to those policies. In relation to landscape impact it was stated:

> "In coming to its decision and in judging the impact on the Area of Great Landscape Value and Area of Outstanding Natural Beauty, the Development Control Committee were mindful of the Environmental Statement undertaken by the applicant under the EIA Regulations, the Council's assessment of the EA, the details contained in the application, the concerns of officers set out in their report and the requirement under a legal agreement to undertake a Landscape and Ecology Management Plan for the Cherkley Estate. It was judged that the landscaping and mitigation measures contained in the application were sufficient to ensure that the overall landscape character would not be compromised …. It was considered that the design of the proposals met the terms of planning policies designed to protect the biodiversity of the estate and the character of the countryside …. It was noted that the development included suitable measures to protect and enhance the majority of the open countryside of the estate alongside formal playing spaces, whilst introducing management of neglected woodland, retaining hedgerows, managing trees and including new planting that is appropriate to a chalk grassland location. There would also be suitable protection during the construction phase.

> The Committee was mindful that a management plan will be prepared to integrate all the management provisions, from construction through to the maturity of the golf course. Therefore, the development could meet commitments to safeguard and enhance the natural environment within the NPPF … and REC12 …. The development was considered to provide an opportunity for stable long term management of the estate and investment to safeguard its ecology and landscape."

41. The judge held that (1) the majority failed to apply the tests in paragraph 116 of the NPPF, (2) could not rationally have concluded that the overall landscape character "would not be compromised", (3) failed to have proper regard to the provision in Policy REC12 that new golf courses would only be permitted if they were consistent with the primary aim of conserving and enhancing the existing landscape, and (4) did not have regard to what he described as the requirement in paragraph 12.72 that new golf courses should be "directed away" from the AONB and AGLV. I have already dealt sufficiently with the issue of "directing away". The other three landscape issues on which the judge found that the majority fell into legal error are considered below.

*Whether paragraph 116 of the NPPF applied*

42. Section 11 of the NPPF is concerned with the conservation and enhancement of the natural environment. Of specific relevance within it are paragraphs 115 and 116 which provide as follows:

> "115. Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, 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 that 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."

43. As regards the proposed development, the judge found at para 139 of his judgment that only the 15th fairway and 16th tee would be physically located within the AONB; the remainder would be located within the AGLV adjacent to the AONB. He

nevertheless took the view that the golf course as a whole was a "major development" to which paragraph 116 of the NPPF applied and that it was therefore subject to the tests of exceptional circumstances and public interest contained in that paragraph. His reasons were these:

> "147. … Paragraph 116 of the NPPF is plainly intended to include '*major developments'* which physically overlap with designated areas or visually encroach upon them. In the present case, it would be artificial, and frankly myopic, to focus simply on the one tee and hole physically within the curtilage of the AONB and ignore the other 17 tees and holes course along the border of the AONB. It would also be contrary to the spirit of Section 11 of the NPPF since the policy is pre-eminently concerned with visual perspectives. In my view, the visual impact of the *whole* proposed golf course on the AONB was clearly relevant and a material consideration. It was also relevant that the adjoining AGLV was considered of AONB quality (and might be redesignated in the near future). There is no evidence or indication that the Council majority considered this issue at all …."

44. The *relevance* of the golf course as a whole for the AONB, including such matters as its impact on visual perspectives, is not in doubt. It forms an aspect of the landscape issues covered *inter alia* by paragraph 115 of the NPPF and Policy REC12 of the Local Plan. The question here, however, is whether the golf course as a whole can properly be regarded as a development to which paragraph 116 of the NPPF applies, so as to be subject to the specific, stringent conditions in that paragraph. On that question I respectfully disagree with the judge. I see no good reason for departing from the language of paragraph 116 itself. The paragraph provides that permission should be refused for major developments "*in*" an AONB or other designated area except where the stated conditions are met: the specific concern of the paragraph is with major developments in a designated area, not with developments outside a designated area, however proximate to the designated area they may be. In this case the only part of the development *in* the AONB would be the 15th fairway and 16th tee. I do not think that the creation of one fairway and one tee of a golf course could reasonably be regarded as a major development *in* the AONB, even when account is taken of the fact that they form part of a larger golf course development the rest of which is immediately adjacent to the AONB.

45. The reasons of the majority of the Committee, whilst stating that the proposed development was considered to conform with the NPPF, did not deal specifically with paragraph 116. The issue had in fact been touched on only briefly in the officers' reports. The first report, written before the publication of the NPPF but at a time when materially the same provision was to be found in PPS7, contained no suggestion that the tests of exceptional circumstances and public interest in paragraph 116 applied. The second report, which took account of the publication of the NPPF, did refer to the terms of paragraph 116. It went on to state that "it is not considered that there are exceptional circumstances for allowing the proposal in such a valued landscape and there is little to suggest that the proposal is in the public interest", and that the proposal was therefore considered to be contrary to the advice contained

within the NPPF. It was therefore implicit that the officers considered the proposal to involve a major development in the AONB. In those circumstances it would have been helpful if the summary of the majority's reasons had indicated the basis on which the views of officers on this issue were rejected, but it was in my judgment legally sufficient to state the majority's conclusion that the development was in conformity with the NPPF. In any event nothing can turn on the omission to refer specifically to paragraph 116 if, as I consider to be the case, that paragraph was not reasonably capable of applying.

*Whether the conclusion in relation to landscape character was rational*

46. The judge held at para 155 of his judgment that the conclusion of the majority of the Committee that the overall landscape character "would not be compromised" was irrational. He said that it flew in the face of "the unanimous and trenchant views" expressed by the landscape experts that the effects would be "major … adverse, long-term and permanent" and the changes were "of such magnitude" that the landscape character would be "fundamentally, and probably irreversibly, altered"; and that the planning officers also advised unequivocally that the proposals would be "seriously detrimental" to the visual amenity.

47. It is common ground that the threshold of irrationality is a high one: counsel referred in this respect to *R v Secretary of State for the Home Department, ex parte Hindley* [1998] QB 751, 777A, to which the judge also referred at para 42 of his judgment.

48. The court will be particularly slow to make a finding of irrationality in relation to a planning judgment of this kind, especially when the members who made the judgment had the benefit of a site visit whereas the court has to work on the written material alone. In this case, moreover, the importance of the site visit is emphasised by the fact that temporary scaffolding had been erected to outline the position of the proposed clubhouse, so that members could assess the impact of the building in the wider landscape. It is also worth noting that in addition to a well attended Committee site visit some members had visited the site individually.

49. The judge evidently felt able to form the view he did on the basis of the written material because he considered that the expert evidence and officers' advice were unequivocally to the effect that the development would be harmful to the landscape. The members were of course not bound by the opinions of experts or officers. In any event, however, in the light of passages drawn to our attention by Mr Findlay and Mr Katkowski I do not accept that the expert evidence and officers' advice all pointed in the one direction. There was certainly a body of evidence that the development would be harmful to the landscape, but there was also evidence the other way and it was recognised in the officers' advice that there was a balance to be struck.

50. Thus, the environmental statement in support of the application for planning permission included a chapter addressing the landscape and visual impacts of the new clubhouse and golf course, comprising a baseline study and an assessment of the potential impacts without mitigation and following mitigation. The assessment had been carried out by two experienced chartered landscape architects on the basis of desktop research and site visits. The chapter's conclusions included the following (with original emphasis):

> "6.65 Views to the application site from publicly accessible places are very limited restricted by topography, intervening woodlands and mature hedgerows. There are a limited number of properties in Tyrrell's Wood and Yarm Way which have direct views of the application site. Of the eleven representative viewpoints, the residual visual impacts are **Long-term local Minor Beneficial.**
>
> 6.66 The application site lies with[in] the Green Belt, the Surrey Hills AONB and Area of Great Landscape Value. The proposed golf course will enhance the landscape character of the area with opportunities for woodland management and the creation of extensive areas of species rich grassland as well as the opening of distant views out of the application site from public rights of way and improved access. The residual landscape impacts are considered to be **Long-term, Local Minor Beneficial.**
>
> 6.67 The proposed golf course and club house will not result in any significant adverse landscape and visual impacts during the day or from light spill during the night, and complies with the overarching aim of the AONB policy to conserve and enhance …."

51. A briefing note for members, dated April 2012, asserted that "Overall, the impact of the formal golf features will not be sufficiently dominant to cause a material change to the landscape character in any of the distant views to the site"; the course would be of natural appearance "enhancing the visual appearance of the landscape"; "The overall landscape character of this private estate will improve with the present open areas of agricultural uniformity enclosed by neglected woodlands, becoming a richer and subtly varied grassland mosaic"; and in relation to the area outside the AONB "the resulting landscape character will be closer in appearance to that of the adjacent AONB".

52. It is right to say that the views expressed in the environmental statement and the briefing note were challenged by others, including the Council's own independent landscape consultant (and the fact that the Council was not prepared to accept the views in the environmental statement but took external professional advice of its own was a factor stressed by Mr Edwards in argument). These matters were discussed at length in a section of the officers' first report on "Landscape implications of the proposed development". But the officers' analysis did not present the evidence as all pointing in one direction. It stated, for example, that "*on balance* the proposals do not enhance the landscape" (emphasis added). The existence of a balance, but at the same time a firm indication that the balance is considered to come down against the proposed development, is also apparent from the summary at the end of the section:

> "There are undoubtedly landscape benefits to be achieved from the proposed development and there is a commitment to manage the components of that landscape in appropriate ways. However, the price to be paid is the imposition of a golf course on over 40% of the open parkland, with all the artificial

> elements associated with this form of development such as greens, tees, bunkers and fairways. However well designed, in a highly exposed location such as this, conspicuous from public highways and rights of way, it is very difficult to disguise these features. In such circumstances, the proposal would be contrary to a number of established planning policies and the landscape impacts must be given considerable weight when determining the application.
>
> … The quality of the Northern Parkland is underlined by its status as an AGLV and one independent landscape study suggests that it has characteristics that are the same as the adjacent AONB. The independent landscape assessment commissioned by the Council endorsed this view. This is a landscape of special quality, natural beauty and character that would not be enhanced and conserved by overlaying upon it the features of a golf course.
>
> The impact on the AONB is disputed. The applicant argues that the visual impact on the AONB would be limited and the area of intensively managed turf within and immediately adjacent to the AONB would be confined to 25% of the land. However, both Natural England and the AONB Planning Adviser disagree and they consider that adverse impact on the AONB can be caused by development on the Northern Parkland as well as changes to 40 Acre Field. The independent landscape assessment also raised concerns about the impact within and adjacent to the AONB and the wider landscape and views from other parts of the AONB ….
>
> The policy basis for considering the application is explicit in stating that development proposals should respect or enhance the landscape character and there is considerable evidence to suggest that it does not …. The conclusion is that the proposal would be harmful to the landscape character of the AGLV and AONB ….”

53. The officers were therefore giving strong, evidence-based advice that the development would have a detrimental impact on the landscape, but they did not go so far as to suggest that the expert evidence pointed unanimously and unequivocally in that direction or that the contrary view was not reasonably open to members. Mr Findlay took us to a passage in a witness statement of Mr Gary Rhoades-Brown, the Council’s Development Control Manager, in which he made clear that he disagreed with the decision of the majority of the Committee but did not consider that their view on this issue or overall was perverse: he said that officers took the view that “whilst the planning balance clearly favoured refusal there were factors on both sides of the balance and it was open to members to take a different view”. Mr Rhoades-Brown’s opinion on the issue of perversity is of course legally irrelevant but what he says about factors on both sides of the balance seems to me to be a fair reflection of the position in relation to landscape impact; and whilst in the light of the evidence I see considerable force in the officers’ advice, I am not persuaded that the weight of the

evidence and advice was such as to leave no room for members rationally to conclude as a matter of planning judgment, in the light of all the written material and what they had seen on their site visit or visits, that the overall landscape character would not be compromised.

54. In my view, therefore, the judge was wrong to find that the conclusion reached by the majority of the Committee was perverse.

*Consistency with the aim of conserving and enhancing the landscape*

55. The judge held at paras 156-157 of his judgment that the majority of the Committee failed to have proper regard to the provision in Policy REC12 that new golf courses in the AONB and AGLV would only be permitted if they were consistent with the primary aim of conserving and enhancing the existing landscape. He said that the majority's conclusions that the proposed development would involve change and mitigation was inconsistent with "conserving and enhancing", and that in the light of the "unanimous evidence" from the landscape experts it was difficult to see how the majority could have concluded that the development was consistent with the aim of conserving *and* enhancing (he emphasised the "and"). In his judgment the majority of the Committee "simply failed to understand this policy requirement".

56. Again I take a different view. It seems to me that the majority of the Committee understood the requirements of Policy REC12 and had them properly in mind. They made more than one reference to the policy in their reasons and stated expressly that the development had been assessed against it and was considered to conform to it. They also made clear that they had taken account of the concerns in the officers' report, where the terms of the policy were spelled out. The summary of their reasons uses the language of enhancement as well as protection of the countryside, supporting the view that they had in mind both limbs of the aim set out in the policy (and it is therefore unnecessary to consider a submission by Mr Findlay that on the proper interpretation of the policy the aim is that the landscape should be *either* conserved *or* enhanced). I see no inconsistency between, on the one hand, an acceptance that the development would involve change and mitigation measures and, on the other hand, an assessment that the development would be consistent overall with the aim of conserving and enhancing the landscape; and it is the overall assessment that matters in the application of a policy of this kind. If and in so far as the judge's conclusion was based on his view as to the irrationality of the finding that the overall landscape character would not be compromised, I have already explained above why I do not share that view. Taking everything together, I am persuaded that the majority's decision did not involve any error of law in relation to the "conserving and enhancing" aspect of Policy REC12.

***Green Belt policy***

57. The whole of the Cherkley Estate is within the Metropolitan Green Belt. The relevant provisions concerning development in the Green Belt are paragraphs 87 to 89 of the NPPF:

> "87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

> 88. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by way of inappropriateness, and any other harm, is clearly outweighed by other considerations.
>
> 89. A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:
>
> - ...
> - provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;
> - the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
> - …."

58. At the time of the officers' first report the relevant provisions were contained in Planning Policy Guidance 2 ("PPG2") in materially the same form, save that PPG2 referred to "essential" facilities for sport and recreation rather than to "appropriate" facilities, the term used in paragraph 89 of the NPPF.

59. Section 11.2 of the first report contained a lengthy discussion of the Green Belt issues. It explained that the proposed golf course was *not* considered inappropriate development as it preserved the openness of the Green Belt. The focus was therefore on the buildings. The clubhouse was considered to be acceptable because it provided essential facilities ancillary to the golf course. Certain of the other elements of new build, in particular those involving extensions to existing buildings or the re-use of the floorspace and volume of buildings for which there were extant permissions, were considered to be acceptable either because they were appropriate development which did not have a detrimental impact on the Green Belt or because there were sufficient very special circumstances to justify what was otherwise inappropriate development in the Green Belt. In relation to certain other elements of new build, however, the officers' view was that they would represent inappropriate development and that there were insufficient very special circumstances to justify them. The flavour of that part of the advice is apparent from the following extracts from the report:

> "The other buildings including the partly underground swimming pool, the underground spa and the partly underground maintenance/service hub buildings are also new development in the Green Belt which is, by definition, harmful to the Green Belt.

> … Whilst the spa would be underground and would therefore have a limited impact on the Green Belt in terms of its built form, it is of a considerable size and would generate a significant amount of activity. The application details that the spa would be available for use by members of the health club, the Golf Club, hotel guests and members of the public by appointment so there would be a considerable amount of use of the spa that would not be associated with the hotel. As such, it is considered that its size and use mean that it would not be ancillary to the hotel.
>
> With regard to the maintenance facility and service hub building, again, this is not a small building and is not solely related to the golf course use. It would have a dual use of servicing all of the uses on site – the hotel, the spa/health club and the cookery school, in addition to the golf course. It is therefore necessary to see if any very special circumstances have been advanced to offset the harm caused to the Green Belt.
>
> …
>
> Despite the spa's position underground, it is considered that the activity associated with the spa and swimming pool in the Green Belt would be harmful to openness, especially in an area that is isolated and where people would have to rely on the private car rather than public transport to access the site. The new build elements are inappropriate development that is harmful to openness. It is considered that there are insufficient very special circumstances to justify these elements of new development in the Green Belt and as such they fail Green Belt policy tests in PPG2. The golf course maintenance facility and service hub building will have a dual use, and whilst accepting that the service hub element will help to minimise the movement of vehicles around the site, it is considered that this element of the proposal is not genuinely ancillary to the golf course and therefore fails the PPG2 policy test with regard to essential facilities."

All this was reflected in the third reason given for the officers' recommendation that permission be refused:

> "The proposal involves new buildings in the Green Belt including a partly underground indoor swimming pool, an underground spa and a partly underground maintenance facility. These buildings, together with the activity generated by the proposed uses, would represent inappropriate development in the Green Belt, in conflict with the aims of PPG2. There are considered to be no very special circumstances advanced that clearly outweigh the harm caused

> by reason of inappropriateness and the level of activity generated by the proposed development …."

60. The officers' second report drew attention to the publication of the NPPF and to the provisions in it concerning the Green Belt but indicated that it did not alter the advice given in the first report.

61. The summary of reasons given by the majority of the Committee for granting the planning permission included the following passage in relation to the Green Belt policies:

> "The development was considered not to compromise significantly the Green Belt policies contained in the NPPF and the Council's Core Strategy by: re-using existing buildings, utilising floorspace granted under previous, extant permissions and locating additional floorspace underground. The design of the development in terms of siting, scale and detailing was considered to retain substantially the openness of the site sufficiently to overcome concerns set out in the officers' report, having regard to the other benefits that would be achieved."

The concluding paragraph of the reasons is also relevant:

> "Having considered all of the material considerations and objection to the development and the officers' concerns as expressed in their reports, the Committee concluded that, when balancing all of the issues, the development would achieve sufficient economic benefits and contained adequate environmental safeguards, having regard also to the conditions set out in the decision notice and to the Section 106 Agreement, to outweigh any concerns."

62. The judge dealt with this issue at paras 170-195 of his judgment, including his analysis at paras 185-195. He thought it clear that the majority of the Committee had failed to apply the "very special circumstances" test when deciding that the Green Belt policy had not been breached. He said that the test did not feature either expressly or inferentially in the reasons and that it was not clear that the majority had grappled with or addressed the main "concerns" addressed in the report. He considered that the reference to "other benefits" was a far cry from the very special circumstances that need to be demonstrated to justify inappropriate development in the Green Belt, and that it was clear that the majority "simply did not consider whether any '*very special considerations*' existed, let alone whether such considerations '*clearly outweighed*' the harm caused to the Green Belt by the '*inappropriate development*'"; the reference to other benefits represented at best a "'fig-leaf attempt to justify an 'overall planning decision'". He identified what he considered to be other flaws in the majority's decision and reasoning in relation to Green Belt policy. He also observed that applicants had to be able to demonstrate a *need* for the *golf course* in order to show that it was not inappropriate development, and that such need had not been demonstrated. He concluded:

> "In my judgment, the Council majority failed conscientiously to consider the three questions set out above, in particular whether '*very special circumstances*' existed which '*clearly outweighed*' the harm. The Reasons were inadequate. The Council majority at best paid lip-service to the Green Belt policy but did not apply it. The Council majority failed to take a proper policy-compliant approach to Green Belt considerations …."

63. The judge's observations about the application of the Green Belt policy to the golf course itself were misplaced. It was the agreed position of all parties that the golf course was itself appropriate development, and there is nothing in the policy that required a need to be demonstrated in order to show that it was not inappropriate development.

64. The main thrust of the judge's criticisms of the majority's decision and reasons, however, concerned the applicability of the Green Belt policy to the buildings. As to that, it seems to me that the judge's criticisms are unfair to the majority. Their starting-point will have been the officers' reports which set out fully and clearly the approach to be followed pursuant to the Green Belt policies (referring originally to PPG2, but then to the NPPF following its publication). The reports identified the extent to which the buildings would represent inappropriate development in the Green Belt and the extent to which the officers considered that there did not exist very special circumstances clearly outweighing the harm caused by reason of the inappropriateness and the level of activity generated by the proposed development. The summary of reasons of the majority shows that in finding that the proposed development conformed with the Green Belt policies contained in the NPPF they had addressed themselves to the officers' reports and had considered the concerns expressed in them but they had concluded that those concerns were overcome by the matters referred to. Although the reasons do not use the language of the policies, it seems to me that the proper inference to be drawn is that the majority had concluded that, to the extent that there would be inappropriate development, there existed very special circumstances that clearly outweighed the harm. I do not think that the failure to use the language of the policy can justify the adverse finding made by the judge. There is nothing to show that the majority were applying a different test from that correctly set out in the officers' reports that they were considering. To deal specifically with a point made by Mr Edwards, the fact that the majority referred in the final paragraph of the summary to a general balancing exercise does not mean that when concluding that there was sufficient to "overcome" the officers' concerns in relation to the Green Belt policies they were applying a simple balancing test rather than asking themselves whether there were very special circumstances that *clearly* outweighed the harm.

65. If I am right so far, a further question is whether the majority fell into legal error in concluding that there existed very special circumstances that clearly outweighed the harm. That conclusion depended in part on their assessment that the design of the development would retain substantially the openness of the site (a matter that appears to me to be relevant primarily to the extent of harm) and in part on their assessment of the "other benefits" that would be achieved by the development. Other passages in the summary of reasons identify a number of benefits arising out of the proposed

development, including economic benefits in the form of jobs for local people and accommodation and facilities for visitors to the district. It was open to the members to place weight on such benefits when deciding whether there existed very special circumstances sufficient to justify approval of the inappropriate development. To describe the reference to other benefits as at best a fig-leaf attempt to justify an overall planning decision is unfair. I can see no legal error in the majority's approach to these matters, and the conclusion they reached cannot in my judgment be said to have been irrational.

***Reasons***

66. As the judge explained at paras 204-206 of his judgment, failure to give adequate reasons was not pursued as a separate ground of challenge before him but was an aspect of the case advanced by Cherkley Campaign under each of the other grounds of challenge. The judge found that the reasons for granting permission were inadequate in respect of the three grounds considered above (need, landscape impact and Green Belt policy) "individually and when read as a whole". He said that they did not comply with the principle in para 15 of the judgment of Sullivan LJ in *R (Siraj) v Kirklees Metropolitan Council* [2010] EWCA Civ 1286 that a fuller summary of the reasons may be necessary where the members have granted planning permission contrary to an officer's recommendation. He noted that the officers tasked with drafting the reasons were faced with a very difficult drafting exercise: they had to seek to justify a decision by a bare majority of members which was contrary to their recommendation and their own personal views. In the judge's view, they were tasked with defending the indefensible.

67. *Siraj* was considered and applied in *R (Telford Trustee No.1 Limited and Telford Trustee No.2 Limited) v Telford and Wrekin Council* [2011] EWCA Civ 896. That was a case in which the members of the planning committee followed the recommendation in the officers' report, so that on any view a relatively brief summary of reasons sufficed. If the judgment in the *Telford* case adds anything material to *Siraj*, it is by way of underlining that the requirement is to give a summary of reasons for the grant of permission, not a summary of reasons for rejecting objectors' representations or a summary of reasons for reasons.

68. In *Scottish Widows Plc & Others v Cherwell District Council* [2013] EWHC 3968 (Admin), at paras 34-39, Burnett J rightly emphasised the cautious formulation of Sullivan LJ's observation in *Siraj* that a fuller summary of the reasons may be necessary where members have granted planning permission contrary to their officers' recommendation. He pointed out that the purpose of summary reasons is to enable those concerned about the application to understand why it has been granted in the context of the surrounding circumstances; and on the facts of the case, in the context of a very detailed exposition of conflicting views in the officers' report for one meeting and the clear reasons given in the report for a further meeting, he held that a simple reference in the summary of reasons to compliance with the NPPF was more than enough to enable all concerned to understand why the permission had been granted.

69. It was pointed out to us that the requirement to give a summary of the reasons for the grant of permission was repealed with effect from 25 June 2013 by article 7 of the Town and Country Planning (Development Management Procedure) (England)

(Amendment) Order 2013. But the requirement was in force at the time of the decision here in issue and nothing turns on its subsequent repeal. Both *Telford* and *Scottish Widows* serve to illustrate, however, the limited nature of the requirement while it was in force.

70. Mr Edwards also drew attention to the requirement under regulation 24(1)(c)(ii) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 that where an EIA application is determined by a local planning authority the authority shall make available for public inspection a statement containing *inter alia* "the main reasons and considerations on which the decision is based". He did not contend, however, that this imposed a higher duty than the duty to give a summary of reasons under the general planning legislation, and he made clear that his primary case in relation to reasons was not based on the EIA Regulations. Moreover the judge's decision was based on the general duty under planning law, not on the specific duty under the EIA Regulations.

71. The summary of reasons for the grant in this case was exceptionally lengthy, far fuller than would have been necessary if the majority of the Committee had accepted the recommendation in the officers' reports. No doubt the drafting exercise was a difficult one, given the extent to which the majority disagreed with the views expressed in the reports. The end result, however, seems to me to have been an adequate summary. In discussing the issues of need, landscape impact and Green Belt policy I have referred as appropriate to the majority's reasons when reaching my conclusions. The reasons make clear that the proposed development was considered to conform with all relevant policies; they show that consideration was given to the officers' reports as a whole, including the points on which officers had taken a different view; and they provide enough to justify the conclusion that the majority neither erred in law nor acted irrationally in departing from the officers' views and reaching a decision contrary to that recommended. I do not agree with the judge that there was an unlawful deficiency of reasons, whether in relation to the issues individually or when read as a whole.

***The costs appeals***

72. If my Lords agree with my conclusions on the main appeals, it will lead to the setting aside of the judge's quashing order and his related costs order, with the result that the separate appeals against the costs order will fall away. The parties will have the opportunity to make written submissions as to the costs consequences of the main appeals if they are unable to reach agreement on the issue. Nothing further needs therefore to be said on the subject of costs at this stage.

***Overall conclusion***

73. I would allow the main appeals by the Council and Longshot and would set aside the judge's quashing order and costs order.

**Lord Justice Underhill :**

74. I agree.

**Lord Justice Floyd :**

75. I also agree.