The Queen on the application of Mark Wildie v Wakefield Metropolitan District Council v Mrs Jackie Avison

Positive/Neutral Judicial Consideration

Court
Queen's Bench Division (Administrative Court)

Judgment Date
13 September 2013

Case No: CO/2606/2013

High Court of Justice Queen's Bench Division Administrative Court at Leeds

[2013] EWHC 2769 (Admin), 2013 WL 4788813

Before: Mr. Stephen Morris QC Sitting as a Deputy High Court Judge

Date: Friday 13th September 2013

Representation

Zack Simons (instructed by Richard Buxton Environmental and Public Law , Solicitors) for the Claimant.
Robert C Smith , counsel, for the Interested Party.
The Defendant did not appear.

Judgment

Mr Stephen Morris QC

Introduction

1. By these judicial review proceedings, Mr Mark Wildie ("the Claimant") challenges a decision dated 28 November 2012 ("the Decision") of Wakefield Metropolitan District Council ("the Defendant") granting planning permission in respect of land off Haw Park Lane, Wintersett, Wakefield ("the Site"). The Site is in the Green Belt. By the Decision, the Defendant granted, subject to a number of conditions, planning permission for:

> "Change of use of land from agricultural field to 20 pitch caravan and camping site, including residential use of land for managers mobile home, construction of a shed, improvements to vehicular access, provision of hard standing, dustbin/recycling area (part retrospective)" …

2. That permission was granted to Mrs Jackie Avison of Goodwin Farms Limited, the owner of the land at the Site ("the Interested Party"). There were two aspects to her application for planning permission for the change of use of the Site: first, for use as a 20 pitch caravan and camping site and, secondly, for residential use of a manager's mobile home. The Defendant's planning officer recommended approval for the first aspect, but refusal in respect of the second aspect. However, by the Decision, the Defendant approved the application in full.

3. The Claimant challenges the Decision on two grounds: failure to give adequate reasons ("Ground 1") and failure properly to interpret or take account of Green Belt policy under the National Planning Policy Framework ("the NPPF") ("Ground 2").

4. In February this year, the Defendant indicated that it agreed to the making of a consent order for the quashing of the planning permission, on the basis of Ground 1 alone. The Interested Party however does not agree and disputes both Grounds.

5. Pursuant to an Order of King J in June 2013, this is the rolled up hearing of permission, and if granted, the substantive judicial review. Mr Zack Simons appeared for the Claimant, and Mr Robert C Smith appeared for the Interested Party. The Defendant did not appear.

The Legal and Policy Framework

6. Before turning to the factual background, I set out the relevant legal framework, comprising the legislative context, relevant legal principles and matters of planning policy.

Planning permission and reasons

(1) The duty to give reasons

7. The duty upon the Defendant to provide reasons in this case is set out in Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 (2010 SI No 2184) ("the Order"), which provided, at the relevant time, as follows:

> "(1) When the local planning authority gives notice of a decision or determination on an application for planning permission or for approval of reserved matters -
>
> (a) where planning permission is granted, the notice shall-
>
> (i) include a summary of their reasons for the grant of permission;
>
> (ii) include a summary of the policies and proposals in the development plan which are relevant to the decision to grant permission; and
>
> (iii) where the permission is granted subject to conditions, state clearly and precisely their full reasons for each condition imposed, specifying all policies and proposals in the development plan which are relevant to the decision; … "

By contrast, Article 31(1)(b) provided that, where planning permission is refused, then the notice should "state clearly and precisely their full reasons for the refusal". (These statutory provisions have since been amended twice).

8. The content of this statutory duty to provide reasons has been considered specifically in two cases: R (on the application of Ling (Bridlington) Ltd) v East Riding of Yorkshire Council [2006] EWHC 1604 (Admin) and subsequently by the *Court of Appeal in R (on the application of Siraj) v Kirkless Metropolitan Council [2010] EWCA Civ 1286* (approving the judgment in Ling .) Following the hearing, the very recent judgment of Haddon-Cave J in R (on the application of Cherkley Campaign

Limited) v Mole Valley District Council[2013] EWHC 2582 (Admin) has been drawn to my attention. It too refers to the duty to give summary reasons (in a case where a planning officer's recommendation was not followed).

9. The principles to be derived from these cases can be stated as follows:

(1) Only *summary* reasons are required for the grant of permission; this is in stark contrast to the requirement for full reasons where permission is refused: see Ling §47.
(2) Such summary reasons do not present a full account of the local planning authority's decision making process; rather they are a summary of the outcome of that process: Siraj , §14.
(3) Summary reasons are not to be equated with fuller reasons required in a Secretary of State's decision letter: Siraj , §14.
(4) When considering whether summary reasons are adequate, it is necessary to have regard to the surrounding circumstances of the case in question: Siraj §15.
(5) Where members of the local planning authority *follow* the recommendation of a planning officer to grant permission, then a relatively brief summary of reasons may well be sufficient; on the other hand, where the members grant permission *contrary to* the advice of a planning officer to refuse, a fuller summary of reasons may well be necessary or appropriate. Siraj §§15 and 16, and Ling §50.
(6) In the latter case, the reason why such a fuller summary may be necessary is as stated by Sullivan LJ in Siraj §15 as follows:

> "a member of the public with an interest in challenging the lawfulness of planning permission will not necessarily be able to ascertain from the officer's report whether, in granting planning permission, the members correctly interpreted the local policies and took all relevant matters into account and disregarded irrelevant matters"

(7) Where members grant permission contrary to an officer's recommendation, the reasons should contain a summary explanation of the reasons *for* the grant of permission: Ling §48.
(8) Further, in such a case, the reasons should also contain a summary explanation of the reasons *why* members disagree with the reasoning in the officer's report which led to that recommendation. In my judgment, this is implicit in §§16 and 17 of Siraj , where Sullivan LJ considered that a relatively brief summary is sufficient, where there is *no* indication of disagreement with the reasoning in the officer's report. The implication is that where there *is* disagreement, the fuller summary reasons should include reasons for that disagreement. Further, in the Cherkley Campaign case, supra, Haddon-Cave J accepted (at §45) the proposition that, in such a case, there must be a rational and *discernable* basis for members to reject the officers' advice. Haddon-Cave J went on (at §185) to criticise the absence, in that case, of any explanation for the disagreement with the planning officer.
(9) Article 31 does not require a summary of the reasons for rejecting objections to the grant of permission: Ling , §48. "Objections" here, in my judgment, refer to third party objections made in the course of the planning application process, and not the planning officer's reasons for recommending refusal.
(10) A summary of reasons does not require a summary of reasons for reasons: Siraj §24 and Ling §49.

(2) Consequences of failure to give reasons

10. As in any case where a ground for judicial review is established, the remedy to be granted consequential upon a finding of inadequate reasons is a matter for the Court's discretion. Where there is a breach of the duty to give summary reasons for the grant of planning permission, three possible remedies arise for consideration: a quashing order in respect of the decision granting planning permission; an order directing the planning authorities to state its reasons; or a declaration that the planning authority has acted in breach of its statutory obligation to give a summary of reasons.

11. As a matter of general principle, the remedy for breach of an administrative law duty to give reasons should normally be the quashing of the decision, rather than an order for the provision of reasons. *Fordham: Judicial Review Handbook* (6th edn) §62.5 and *De Smith's Judicial Review* (7th edn) § 7–112. The policy underlying that normal rule is, first, that the rationale for the duty to give reasons is that it acts as incentive for careful and disciplined decision making and, secondly, it avoids the risk of 'after the event' reconstruction of reasons by the relevant decision maker. Further, as a result of the lapse of time

between the original decision and the judicial review proceedings, it may be impracticable for such reasons to be given. It is only in limited circumstances that the absence or inadequacy of reasons can be remedied by the provision of further reasons.

12. I have been *referred to three cases specifically: R v Westminster City Council ex parte Ermakov [1996] 2 All E R 302* (CA), and two cases dealing specifically with the duty to give reasons for planning permission: *R (on the application of Macrae) v Herefordshire District Council [2012] EWCA Civ 457* (CA) and R (on the application of Prideaux) v. Buckinghamshire County Council[2013] EWHC 1054 (Admin).

Ermakov

13. In *ex parte Ermakov* , Hutchinson LJ explained (at 315h to 316d) the rationale for the general rule that where there is a breach of a duty to give reasons, the applicant is prima facie entitled to have the decision quashed as unlawful. First, the function of allowing further evidence of an authority's reasons is to elucidate and confirm the original reasons, and not to allow fundamental alteration or contradiction of those original reasons. Secondly, the applicant for judicial review does not need to show that he has suffered prejudice by dint of the absence of reasons. He is prima facie entitled to have the decision quashed, if the reasons given are not adequate. To allow subsequent evidence of reasons both encourages a sloppy approach to reasons by the decision maker and also might permit the remedying of flawed original reasoning. Thirdly, however, a court might refuse to quash the decision where it is clear that, on reconsideration, that decision would be the same.

Macrae

14. In Macrae , planning permission was granted for the construction of a dwelling in open countryside. The council's planning officers had recommended that planning permission should be refused. The council's grant of permission included summary reasons. At first instance the judge held that the claim had not been brought promptly, that the grant of planning permission was not substantively unlawful or irrational, and that the reasons given were inadequate, but that the council's views could be ascertained from the minutes of the meetings. On appeal, the appellant challenged the finding on promptness and the finding that the reasons could be ascertained from the minutes. The appellant did not contend that the summary reasons were adequate, nor, significantly, that the council's decision was substantively unlawful or irrational. The Court of Appeal overturned the judge's decision on promptness, and then went on to consider the reasons issue. At §26 Sullivan LJ emphasised that the underlying statutory purpose of requiring summary reasons *"was to avoid the need for claimants to pursue a paper chase and to examine extrinsic evidence in order to ascertain what the reasons for granting planning permission really were"* . Then, at §27, he cited his own judgment in R (Wall) v Brighton and Hove City Council [2004] EWHC 2582 (Admin) at §57, where he had said:

> "there would have to be very powerful reasons for not quashing a decision notice which did not include the local planning authority's summary reasons for granting planning permission. To allow extrinsic post hoc evidence as to what the local planning authority's reasons were in such cases would perpetuate the very problems that Parliament intended the substituted article 22(1) to address."

He held that the judge was wrong to hold that the reasons could be ascertained from the minutes of the meeting.

15. At §§30 and 31, Sullivan LJ then considered what relief should be ordered consequential upon the finding that the summary reasons were inadequate. He said (§30):

> "Since the judge's decision the house had been built and it is now occupied by the interested party, his wife and two small children; a third child will soon be added to their family. Since there has been no challenge to the judge's conclusion that the grant of planning permission was not unlawful … or otherwise irrational … it is in my view quite inconceivable that if we were now to quash the planning permission the respondent on redetermination would refuse to grant a retrospective planning permission and would think it expedient to commence enforcement notice proceedings to secure removal of the house . In these circumstances I accept Mr Giles' submission that an order quashing the planning permission would be a disproportionate remedy. … " (emphasis added)

Then, at §31, Sullivan LJ decided that an order that the council provide a summary of its reasons would not be appropriate, given the lapse of time. He concluded that the appropriate remedy was a declaration that the summary reasons did not comply with the statutory requirement and that, in the "somewhat unusual circumstances", this was sufficient vindication of the appellant's position.

16. Pill LJ agreed (at §§39–41). It was not appropriate to quash because the prospect of the grant of permission was strong and the prospect of enforcement proceedings virtually non-existent. Further, the council should not be required to give further reasons, because it would not be sensible to try to reassemble the 19 members of the council, some two years later and there was a risk of distorted, or ex post facto, reasoning being given. He emphasised the importance of the statutory duty to give reasons being discharged at the time of the decision, relying on the dual purpose reasoning of Henry LJ in *Flannery v Halifax Estate Agencies [2000] 1 WLR 377* . Nevertheless on the facts of the case a declaration would vindicate the appellant's rights.

Prideaux

17. In Prideaux , there was a challenge to the grant of planning permission by the council for an energy from waste facility at a farm. There were three grounds of challenge: the first two challenges failed. The third ground was failure to provide adequate reasons, which Lindblom J dealt with at §§159 to 168. This was a case where the council had followed the officer's recommendation. The reasons in the notice of decision were brief, stating the conclusion that the need for the facility outweighed the significant adverse impact, and that the development was "considered to be generally in compliance with" the relevant policies in development plans and other documents (§74).

18. Lindblom J held that there was no breach of Article 31 at all, stating (at §165):

> "Terse as they are, the summary reasons given for the grant are also lawful. Elaborate reasons are not required. Brevity is usually a virtue, so long as the essential rationale of the decision is apparent. Here it is."

He pointed out that the council members plainly agreed with the officer's report, and that report was itself sufficiently detailed.

19. Then, at §168, Lindblom J went on to consider the position if he had found the summary reasons to be inadequate:

> "If I had found the summary reasons in the decision notice fell short of what was required I would have held that this did not cause the claimant or anyone else substantial prejudice. The reasons why planning permission was granted in this case may readily be seen in the officers' report, which sets them out at considerable length. In these circumstances , it could not be said that anybody has been prejudiced by a deficiency in the reasons stated in the County Council's decision notice. The remedy then, rather than an order to quash the planning permission, would have been mandatory relief requiring the reasons to be made good … " (emphasis added)

20. From these authorities, I conclude as follows:

(1) The normal remedy for failure to provide adequate reasons is to quash the underlying substantive decision. Such a remedy serves the dual purpose of encouraging rigorous decision making and avoiding the risks associated with "after the event" reconstruction of reasons.
(2) Alternative remedies include an order for a statement of the reasons or, merely, a declaration that the authority breached its statutory duty to provide summary reasons.

(3) Quashing might be refused where it is clear that, upon reconsideration, the substantive decision would be the same.
(4) The relevant prejudice to the applicant for relief is the inability to understand whether there may be grounds to challenge the substantive decision.
(5) Prejudice to the beneficiary of the decision may be a relevant factor in the exercise of discretion on remedy.

Relevant Planning Policy

21. By s.70(2) Town and Country Planning Act 1990 , in dealing with a planning application, a planning authority must have regard, inter alia, to the provisions of the development plan and any other material considerations. S.38(6) of the Planning and Compulsory Purchase Act 2004 provides that where "regard is to be had to the development plan for the purpose of any determination … the determination must be made in accordance with the plan unless material considerations indicate otherwise". Here the Defendant was required to apply its development plan and further to have regard to other material policy considerations, which here include national policy on the Green Belt.

Local Development plan — Wakefield Core Strategy

22. The Wakefield Metropolitan District statutory local development plan includes the Wakefield Core Strategy, adopted in April 2009. The Wakefield Core Strategy expressly incorporates national Green Belt policy (in the NPPF) in two policies: at CS1 Location of Development and CS3: Scale and Distribution of Additional Housing. In both policies, development is required to conform to national Green Belt policy.

Green Belt and the NPPF: "very special circumstances "

23. Since March 2012, national policy in relation to the Green Belt has been contained in the National Planning Policy Framework ("NPPF"). Paragraph 17 NPPF sets out 12 "core planning principles", the fifth of which states that planning:

> "should take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it"

24. Chapter 9 of NPPF is headed "Protecting Green Belt Land". Paragraphs 87 to 89 provide:

> "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 reason 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. [the paragraph then sets out exceptions to this]
>
> 90. Certain other forms of development are also not inappropriate in Green Belt … [the paragraph then enumerates the "other forms"]."

These paragraphs of the NPPF replaced, without material difference, Green Belt policy set out in the Government's Planning Policy Guidance Note 2: Green Belts ("PPG 2"), at paragraphs 3.1 and 3.2.

25. In the present case, it is common ground that both aspects of the proposed development — the 20 pitch caravan/camping site and the residential use of the mobile home — constituted inappropriate development, on the basis that they did not fall within the "other forms of development" identified in paragraph 90. Thus the Defendant had to be satisfied that the "very special circumstances" test in the second sentence of paragraph 88 was established.

Case law on Green Belt, inappropriate development and "very special circumstances"

26. Whilst the application of planning policy in any particular factual circumstances is a matter of planning judgment, the interpretation of planning policy is a matter of law for the Court. A planning authority must proceed on the basis of a correct understanding of the development plan. Policy statements must be interpreted objectively in accordance with the language used, read in its proper context: see *Tesco Stores Ltd v Dundee City Council [2012] UKSC 13* at §§17, 18 and 21.

27. As regards inappropriate development in the Green Belt and the proper interpretation of the "very special circumstances" test, to be found in §§87 and 88 NPPF (and in its predecessor PPG2), there are a number of relevant authorities. The three principal authorities are the decisions of Sullivan J (as he then was) in Doncaster Metropolitan Borough Council v. Secretary of State for the Environment, Transport and the Regions[2002] EWHC 808 (Admin) esp at §§64, 67–70, 74 and in R (on the application of Chelmsford BC) v First Secretary of State [2003] EWHC 2978 [2004] 2 P & CR 34 , esp at §§42, 54–62, 65–67, 69 and 71, and the subsequent *Court of Appeal decision in Wychavon District Council v Secretary of State for Communities and Local Government[2008] EWCA Civ 692 [2009] PTSR 19* per Carnwath LJ at §§15–32 and in particular §§21 and 25–27. I have also been referred to *South Buckinghamshire District Council v Secretary of State for Transport, Local Government and the Regions[2003] EWCA Civ 687* per Pill LJ at §§30 and 31, and Taylor Wimpey (South West Thames) Limited v Secretary of State for Communities and Local Government [2011] EWHC 2090 (Admin) and, since the hearing, the recent decision of Haddon-Cave J in the Cherkley Campaign case, above

28. These cases, and in particular the relationship between the Doncaster , Chelmsford and Wychavon cases, appear to raise some detailed issues as to precisely the correct approach to the "very special circumstances" test, which are material to the issues on Ground 2. In particular, there may be a question as to the extent to which reasoning in the Chelmsford judgment is undermined by the criticism made by Carnwath LJ in Wychavon . However, as explained in paragraphs 96 to 100 below, I have decided that it is not necessary or appropriate for me to determine Ground 2. Accordingly, I do not enter upon examination of these detailed issues. For present purposes, the following summary of the "very special circumstances" test suffices.

29. *First* , the correct approach to the very special circumstances test is to ask the following question (adapting the wording of §70 in Doncaster (as approved by Carnwath LJ in Wychavon §26)):

> "Given that inappropriate development is by definition harmful, the proper approach [is] whether the harm by reason of inappropriateness and the further harm, albeit limited, caused to the openness and purpose of the Green Belt was clearly outweighed by the [countervailing benefit arising from the development] so as to amount to very special circumstances justifying an exception to the Green Belt policy"

Thus, in considering whether to allow development in the Green Belt, the decision maker must consider, *first* , the "definitional" harm arising from the inappropriate development *as well as* such further harm to the Green Belt as is identified as being caused by the development in that case, and then *secondly* consider countervailing benefits said to be served by the development; and then consider whether those benefits *clearly* outweigh the harm so as to amount to very special circumstances. *Secondly* , in order to qualify as "very special", circumstances do not have to be other than "commonplace" i.e. they do not have to be rarely occurring. *Thirdly* , the test is not one of whether the harm to the Green Belt (definitional or specific) is "significant or unacceptable", either of itself or following the balancing exercise.

30. I add that, whilst principally a case on the content of the "very special circumstances" test, Doncaster is also a case on the adequacy of the reasons given for a finding of very special circumstances. Although this is a case of an inspector's decision and so does not directly relate to the Article 31 duty upon a local authority, nevertheless it does demonstrate the

need for sufficient reasons so as not to be left in doubt as whether the very special circumstances test has been correctly applied: see Doncaster , §§74 and 75.

Remedies: Partial quashing

31. The question arises whether, as a matter of principle, there is power to quash a grant of planning permission in part only, and if so, in what circumstances. This is not necessarily the same question as to whether it is possible to sever an invalid condition from an otherwise valid grant of planning permission.

32. As to whether, in general, an administrative decision, found to be unlawful in some respects but not in others, can be quashed only in part, *Fordham* supra, states (at §43.1):

> "A successfully impugned measure (enactment, rule or decision) may be held not to be unlawful in its entirety. It may be possible for the measure to be overturned or declared unlawful as to the offending parts, with the remainder of it upheld and subsisting"

33. At §43.1.6 *Fordham* gives examples of cases where a decision has been quashed in part. The only planning case there referred to is R (on the application of Guiney) v Greenwich LBC [2008] EWHC 2012 (Admin), recording that it was not possible in that case.

34. The *Encyclopaedia of Planning Law* §P72.21 states under the heading "Severance of invalid conditions":

> "In holding a condition to be invalid, the court has no power to mutilate the authority's decision by removing the condition and allowing the permission to stand (Pyx Granite … per Hodson LJ) unless the condition is severable from the permission. The test of severability is to ask whether the condition goes to the root of the permission, or whether it deals with some ulterior, collateral or trivial matter: see e.g. *Kingsway Investment (Kent) Ltd v Kent CC [1971] A.C. 72* HL; *Hall & Co Ltd v Shoreham UDC [1964] 1 WLR 240* … "

The paragraph goes on to state, somewhat tentatively:

> "There would appear to be no power to set aside a part of a planning permission: R (on the application of Guiney) v Greenwich LBC [2008] EWHC 2012 (Admin)."

35. On this issue, the Claimant submitted as follows. *First* , the conventional approach to severance must be modified in its application to a grant of planning permission. *Secondly* , there is "little or no scope" to quash only part of a planning permission, citing Guiney §50. This is supported by the fact that, in contrast to the position relating to severance of invalid planning conditions, there is no other case authority dealing with the partial quashing a planning permission. *Thirdly* , the approach of "separating the bad from the good" applicable to contract or statute is not apt for planning permission. Planning permission is, in the words of Lord Guest in Kingsway (at 107A-B) "an animal sui generis" and is "entire". *Fourthly,* in any event, any question as to the interdependability of different parts of a planning permission involves matters of planning judgment, which are within the province of the decision maker.

36. The Interested Party submitted as follows. *First* the House of Lords decision in Kingsway was a case concerning the severance of an invalid planning condition, and not partial invalidity of the planning permission. Further, when the speeches

of all their Lordships are considered, the decision is not authority for the proposition that, in a planning permission case, an invalid condition can never be severed from the permission. *Secondly* , in both cases (partial invalidity of the permission and severance of an invalid condition), partial quashing is permissible and the test is whether the "good is so inextricably mixed up with the bad" that the entire permission must be quashed. *Thirdly* , Guiney is not authority for the proposition that partial quashing of a planning permission is not possible. It was a decision on the facts of that case.

37. Having considered in detail the speeches of each of their Lordships in Kingsway and of the judgment in Guiney , I conclude as follows this issue.

38. First, in principle, there is power in the court to make a quashing order in respect of part only of a decision: see *Fordham* , supra, §43.1. This principle can be applied to a grant of planning permission. Guiney is not authority to the contrary, and does not establish the proposition that it is not possible in law partially to quash planning permission. As regards the first reason given at §50 in Guiney , in my judgment the decision of the House of Lords in Kingsway does not establish that, in principle, there is "little or no scope" for severing planning permission. Kingsway was a case concerning severance of a condition from a permission. (I doubt that there is any basis in principle for distinguishing between (a) severing within the planning permission and (b) severing a conditions from the planning permission). In any event, Kingsway is not authority for the proposition that an invalid condition can never be severed from the permission. In particular, the speech of Lord Guest (at 107A) does not represent the majority view on that issue. (In any event Lord Guest (at 107B-C) also agreed with Lord Morris). Rather a majority of their Lordships (and previous case law there cited) support the proposition that severance is possible: see Lord Reid at 90A-91E, Lord Morris at 102E-103C, Lord Donovan at 114F, and Lord Upjohn at 112E-114E. *De Smith* , supra, §§5.145 and 5.146, and fn 505, supports this analysis of Kingsway . As regards the second, and more detailed reason given in Guiney (at §§50 and 51), the decision there not to quash partially was one of mixed fact and law and was very much taken on the particular facts of the case. That second reason did not set out any principle applicable to all cases. (I note too that in that case the choice was between partial quashing and not quashing at all).

39. Secondly, in my judgment, the test as to whether a planning permission can be partially quashed is whether the good part is "so inextricably mixed up" with the bad part that it is not possible to save the good part, or put another way, how dependent were the other aspects of the development upon that part which has been found to be invalid.

40. Thirdly, in considering whether to quash in part only, it is relevant to consider what the planning authority would have done had it known at the time that the grant of permission in respect of part of the development was invalid: see Kingsway per Lord Morris at 103B-C and Lord Upjohn at 113G-H, and *De Smith* , supra. Any such decision by the authority would have been a matter of planning judgment.

Factual Background

The Site and the parties

41. The Interested Party and Goodwin Farms operate a family farm, at Santingley Grange, Wintersett, of some 165 acres of arable and grazing land. The Site is a field forming part of that farm, half a mile from the main farmstead and located adjacent to the village settlement areas in Wintersett. The Claimant is a neighbour who lives at Stoneleigh Cottages, off Ferry Top Lane, Wintersett, situated some 200 metres from the Site.

The previous planning application

42. On 25 February 2012 the Interested Party submitted a first application (ref 12/0466/FUL) for planning permission in respect of the Site. That application was limited to the grant of permission for a residential use of 1 mobile home for a caravan and campsite warden/farm worker, with associated operational development. At that point in time, the Interested Party was not seeking to expand the camping activities at the Site to an extent which required planning permission.

43. On 11 June 2012, the Defendant's planning officer, Mr Herbert Tos ("the Planning Officer") produced a report considering this application in some detail. The Interested Party's arguments in support of permission included the need for the provision of security and tourist service and the need to improve the safety and welfare of livestock on the farm. The Planning Officer concluded that these arguments did not amount to very special circumstances justifying inappropriate development. Safety and security issues were not sufficient to justify the proposed dwelling, and the presence of staff could be achieved by other means. Further there was no sufficient evidence to support the claim of agricultural diversification. Accordingly, he recommended refusal of the application. As a result, the Interested Party withdrew the application.

The instant planning application

44. On or around 5 July 2012, the Interested Party put a mobile home on the Site. Then on 30 July 2012, the Interested Party submitted a further application for planning permission, for:

> "Change of use from agricultural field to 20 pitch caravan and camping site including managers' mobile home (part retrospective). Resubmission of Application Number 12/0466FUL"

This time the application was not only for a change of use to allow a residential manager, but also for planning permission for a 20 pitch caravanning/camping site, which would be open to all members of the public. I understand that the application was "in part retrospective", because by that time some aspects of the proposed development were in place or had been constructed.

The Design, Access and Planning Statement

45. The Interested Party submitted a detailed Design, Access and Planning Statement in support of this application. It pointed out, inter alia, that there were only two other commercial touring sites within Wakefield MDC area and that farm diversification is heavily supported by national and local planning policy. It also referred to Good Practice on Planning for Tourism which states that *"for many types of holiday parks, a residential managerial presence is often essential to achieve quality of service to the customer, security for the property and to meet the obligations of health and safety regulations"* . Further, aware that the Planning Officer had previously not been convinced of need for a residential manager, the Statement addressed some of his concerns, emphasising that the risk of crime was very significant and that such crime would impose costs upon the business at the Site.

The Planning Officer's Report

46. On 30 October 2012 the Planning Officer produced his report on this application ("the Report"). The Report recorded that the mobile home was in situ, and that planning permission was not required for the structure but for the use of the land for residential purposes.

47. In summary, the Planning Officer identified both aspects of the proposal as "inappropriate development" in the Green Belt and stated that it could only be justified if "very special circumstances" outweighed the harm to the Green Belt. He considered, distinctly, the two aspects of the application: the 20 pitch site and the residential manager in the mobile home. In respect of each, he identified the additional harm to the Green Belt and whether the claimed considerations said to amount to very special circumstances outweighed the harm to the Green Belt. In the case of the 20 pitch site, he concluded that there were very special circumstances; in the case of the residential use for the manager's mobile home, he concluded that there were not. Accordingly he recommended that planning permission be granted for the 20 pitch site, but be refused for the residential use for the manager's mobile home. It is necessary to look at the Report in a little more detail.

48. The Report set out, verbatim, the terms of paragraph 87 and the second sentence of paragraph 88 of the NPPF. Then, on the question of "harm", the Officer addressed the two aspects of the application distinctly, stating:

> "It is considered that the harm to the Green Belt caused by the proposed camping/caravanning site would include visual impact of the associated infrastructure within the land and the effect on the appearance of the land due to fluctuating numbers of caravans/tents and associated vehicles/cars parked at the site.
>
> The harm to the Green Belt caused by the proposed residential use of land includes visual impact of the provision of necessary infrastructure to serve the occupation of the site and permanent visual impact of the proposed mobile home together with associated cars/vehicles."

49. Having identified the "harm", the Planning Officer then went on to consider whether "very special circumstances" justified granting the application, dealing with the two aspects separately. First, in respect of the 20 pitch site, the Report stated:

> **"Consideration of very special circumstances — caravan/camping site**
>
> The applicant's case can be summarised as follows:
>
> > The proposal would assist in achieving diversification of the farm business
> >
> > The scheme would benefit the local economy and encourage tourism in the local area;
> >
> > There is an unmet need for caravan and camping provision in the district
>
> Officers consider that the scheme would be in line with the aspirations of the district to encourage local business and it would benefit the tourist economy by adding to the offer for any visitors to the area. The scheme would also aid diversification of the local agricultural business and would help to generate additional income in the local economy,
>
> Having considered the above benefits of the scheme in the context of the Green Belt policy it is concluded that there are very special circumstances and outweigh the harm by reason of inappropriateness and visual harm of the development as identified above.
>
> Given the above it is concluded that the proposed change of use of land to a caravan/camping site and associated infrastructure would not be contrary to the guidance of NPPF and policy SC1 of the Core Strategy
>
> It is however recommended that the use of the site takes place only for 10 months within any one year to prevent a permanent residential use of any of the plots to be established and to retain the character as short stay caravan/camping site."

50. Secondly, in respect of the residential use of the mobile home, the Report stated:

> **"Consideration of very special circumstances — residential use of land associated with the caravan/camping site**
>
> The applicant's case can be summarised as follows:

> The proposal would secure diversification of the farm business and also benefit local economy/tourism;
>
> The presence of a warden at the site will be necessary seven days a week from early morning to late evening to attend any visitors arriving/leaving the site;
>
> A manager's presence is required at the site in case of any emergency and to control access to the site;
>
> The proposed camping site will be operating all year, including winter months;
>
> The intended on-site accommodation would provide security for the site and enhance level of safety within the local area, including safety of the farms' livestock;
>
> There is an unmet need for caravan and camping provision in the district;
>
> On site accommodation is recommended by the Good Practice Guide on Planning for Tourism."

I refer to these foregoing considerations as the Interested Party's "seven considerations"

51. The Report continued:

> "Officers accept that the operation of the site will require a presence of a warden/staff at the site to direct visitors, control access and provide overall management of the caravanning site. It is however considered that this could be achieved by other means (by provision of a small site hut/ office for instance) and considering that the applicant lives in proximity of the site, does not justify the provision of an on-site mobile home in the Green Belt.
>
> Furthermore, given that a staff presence can be achieved at the site for much of the day/evening without a residential use at the site, it is considered that the need for presence in case of an overnight emergency on a small touring camp site is likely to be very limited and does not justify the provision of a permanent mobile home on the site.
>
> It has already been recommended that the operation of the camp site is limited to 10 months of the year. In any event, there will no doubt be seasonal fluctuations in respect of occupancy rates. These factors further reduce the case for the provision of a permanent mobile home on the site."

After recording the applicant's arguments based on security at the site and security of livestock, the Report continued:

> "It is acknowledged that an on-site residency of the site manager would undoubtedly add to the level of natural surveillance in the areas and the comments in this respect provided by the Police Architectural Liaison Officer confirm the above.
>
> Notwithstanding the above and the examples of theft and vandalism in the local area, it is considered that the locality of the application site is not more vulnerable to crime than any other rural area within the district. Given the above and the fact that a reasonable level of security at the proposed site can be provided without a residential occupation of the land, it is considered that the above arguments do not amount to very special circumstances which clearly outweigh the harm by reason of the inappropriateness and the visual impact of the mobile home." (emphasis added)

52. The Report then referred to CS8 of the Core Strategy addressing the encouragement of tourism, and continued:

> "It is considered that the support for the caravan/camping site in accordance with the above policy does not necessarily imply that a residential use of land associated with the above proposal must also be supported. In this case, it is considered that the business can operate without a permanent mobile home on the site.
>
> The advice contained in the Good Practice Guide on Planning for Tourism is noted and has been taken into account when assessing the proposal. The guide recognises a need for some developments to include an on-site staff accommodation. However, for the reasons already given, it is not considered that the need for a permanent mobile home on the site has been demonstrated."

53. The Report then drew together its conclusions on very special circumstances in respect of the two aspects:

> **"Summary of consideration of very special circumstances**
>
> It is considered that there are very special circumstances to justify the proposed change the use of the land to a caravan/camping site in accordance with the guidance of NPPF and policy SC1 of the Core Strategy.
>
> It is considered that this use can operate successfully without a permanent residential use of the site. It is therefore concluded that in this instance there are no very special circumstances to justify this part of the development within the Green Belt contrary to the guidance of the NPPF and policies CS1, CS3 of the Core Strategy."

Accordingly, the Officer recommended a split decision with approval (subject to conditions) for the 20 pitch site aspect of the development, and refusal of the proposed residential use of the land "as it is considered that no satisfactory justification for this part of the proposal has been made which clearly outweighs the harm to the Green Belt". At the end of the formal recommendation, there is a "Note", which is in the same terms as the Note in the Decision Notice, set out in paragraph below. It appears, from its inclusion in the Report, that at that stage that wording was intended to cover permission in respect only of the 20 pitch site.

The Decision

Meeting on 8 November 2012 and the Minutes

54. At its meeting on 8 November 2012, the Defendant's Planning and Highways Committee ("the Committee") resolved that it was minded to approve the grant of planning permission, for a temporary period of three years, for the whole of the proposed development. The minutes of that meeting ("the Minutes") recorded that decision and stated:

> "Notwithstanding Officers advice, Members felt that the proposed development in (2) above was appropriate to this location and would not result in any significant or unacceptable harm to the Green Belt."
>
> Officer recommendation was for a split decision"

In the Minutes, the "proposed development in (2) above" was identified specifically as that part of the application seeking residential use of the mobile home. These minutes were formally approved as a correct record at the Committee's subsequent meeting on 29 November 2012.

The formal decision notice

55. On 28 November 2012, the Defendant issued its formal decision notice granting planning permission ("the Decision Notice"). The Decision Notice recorded the grant of planning permission, as set out in paragraph 1 above, and subject to conditions. Explanatory reasons were given for the conditions: condition 11 stated:

> "The use of the land for the purposes of siting of the mobile home shall be only for the benefit of the touring caravan and camping site's manager and her/his family to provide security and to manage the touring caravan and camping site.
>
> Reason: To provide justification of very special circumstances for an inappropriate development within the Green Belt in accordance with the guidance of the NPPF."

56. At the end of the Decision Notice, under "Notes", it was stated as follows:

> "Having taken into account the submitted details and all material planning considerations, including those raised in the consultations and representations received, it is considered that the proposed use of land for a 20 pitch touring caravan/camping site, the siting of a mobile home and associated infrastructure <u>is supported by very special circumstances and therefore is acceptable at this location and would not result in any significant or unacceptable harm</u> by reason of its design, appearance, impact on local amenity and highway safety, effect on the openness of the Green Belt, drainage and flood risk, landscaping, drainage, crime prevention, ecology, minerals' extraction subject to the indicated planning conditions" (<u>emphasis</u> added)

As pointed out above, this same wording was included in Planning Officer's Report, where it applied only to the 20 pitch site. However, as included in the Decision Notice, these same words on their face apply to both aspects of the proposal, including

residential use of the mobile home. The use of the same words is difficult to understand, and may suggest that no distinct reasons are being given in this Note for the specifically different position adopted by the Committee. The Decision Notice contains no reference to the Report or to the reasons therein relating to the residential use of the mobile home.

Procedural background

57. On 4 February 2013, the Claimant sent pre-action protocol letters to the Defendant and the Interested Party, setting out, in some considerable detail, his challenge to the Decision, including the two grounds now relied upon. By letter dated 19 February 2013 the Defendant responded, agreeing to the quashing of the planning permission on the basis of Ground 1 only and invited the Claimant to draw up a consent order. The Defendant indicated that it did not concede Ground 2, and in particular that the challenge to the Report failed to take account of the disapproval, by the Court of Appeal in Wychavon , of the Chelmsford case.

58. On 22 February 2013, the claim form was issued. The Claimant sought the Interested Party's consent to an order quashing the Decision. On 8 March 2013, the Claimant served the claim form on the Defendant and on the Interested Party. On 13 March 2013, the Interested Party informed the Claimant that she was contesting the claim **. On 20 and 21 March 2013, the Claimant and Defendant signed an agreed consent order. The consent order agreed to the quashing of the Decision in its entirety. In an accompanying agreed "statement of matters", they agreed that the planning permission should be quashed specifically on Ground 1. It was further stated that "the parties reserve their position as to Ground [2]** ". On 25 March 2013 the Interested Party filed its acknowledgement of service enclosing summary grounds for contesting the claim.

59. Following the signing of this agreed consent order and the Interested Party's indication of contesting, the Defendant was kept informed of the progress of the proceedings. On 28 March 2013, the Claimant sent a copy of its full statement of facts and grounds to the Defendant and to the Interested Party. In accordance with its terms, the order of 11 June 2013 of King J directing a rolled up hearing, was served on the Defendant, as well as the Interested Party. By email dated 17 June 2013 to the Court, the Defendant stated that it would not attend the court hearing, as it had previously indicated its consent to the quashing of the planning permission. Thereafter, the Claimant sent to the Defendant, by email dated 5 August 2013, an electronic link to the trial bundle and, by email dated 8 August 2013, a copy of its skeleton argument for the present hearing. On 13 August 2013, the Defendant acknowledged receipt of the skeleton argument as a party to the proceedings and repeated that it would not be in attendance at the hearing

The Issues

60. The Claimant challenges the Decision on two grounds:

Ground 1: the Defendant gave no adequate reasons as to why the Application was justified by "very special circumstances.
Ground 2: the Defendant failed properly to interpret or take account of Green Belt policy.

61. The Claimant's case is, *first* , the reasons for the Decision were inadequate, and that, on this ground, the Decision should be quashed in its entirety; on that basis, he does not press his case on Ground 2. *Secondly* , and alternatively, if the reasons are not inadequate, or if the Decision is not quashed, or not quashed in its entirety, then the court should go on to find in his favour on Ground 2 and quash the decision in its entirety on that basis.

62. The Interested Party's case is *first* that the reasons were not inadequate; *secondly* , and alternatively that, even if the reasons were inadequate, the Decision should not be quashed; rather the appropriate remedy is an order for reasons to be given or for a declaration of breach of the statutory duty to give reasons. *Thirdly* , even if a quashing order is appropriate, the Decision should only be partially quashed i.e. in so far as it relates to residential use of the mobile home. *Fourthly* , and in any event, the court should not consider Ground 2, because the Defendant has not appeared to contest it.

63. In the light of these contentions, the issues which arise for determination are as follows:

Ground 1:

(1) Were the summary reasons given by the Defendant inadequate?

(2) If so, is the appropriate remedy, a quashing order, an order for further reasons, or a declaration of breach of duty?

(3) If the appropriate remedy is a quashing order, should the Decision be quashed in full or only in part?

Ground 2:

(1) Can the Court consider Ground 2 at all, given the Defendant's position?

(2) In the light of the answers in relation to Ground 1, should the Court consider Ground 2?

(3) If the Court considers Ground 2, was the Decision unlawful for failure to interpret Green Belt policy in respect of (a) the 20 pitch site and (b) the residential use of the mobile home?

Ground 1: Reasons

Issue (1): Adequacy of reasons

Parties' submissions

64. *The Claimant submitted* that the summary reasons given by the Defendant were inadequate, in breach of Article 31 of the Order, in all the circumstances of the case. This was a case where the Committee refused, at least in part, to follow the recommendation of the Planning Offer, and so a fuller summary of reasons was necessary. In this context, the Claimant emphasised the importance, in a Green Belt case, of the "very special circumstances" test being applied with rigour.

65. The reasons in relation to the permission for residential use of the mobile home were inadequate in circumstances where the Planning Officer had considered that issue in some considerable detail in the Report, expressing views consistent with those detailed in his report on the previous application. As regards *the Minutes* , the reasons recorded there gave no indication of whether the Committee considered that the proposal amounted to "inappropriate development" at all; nor, if it did so amount, whether, and if so, what weight was to be given (a) to definitional harm or (b) "any other harm" to the Green Belt; what circumstances were to be weighed against those harms to the Green Belt, and whether those circumstances were "very special" and why they were "very special". The Minutes made no reference at all to the "very special circumstances" test. Further they gave no indication as to what respects, and on what basis, the Committee disagreed with the Planning Officer. As regards *the Decision Notice* , whilst reference was made to "very special circumstances", again no indication was given as to what respects, and on what basis, the Committee disagreed with the Planning Officer, what circumstances were considered to be very special, and why. This was particularly relevant to residential use of the mobile home, as the Planning Officer had ruled out each of the seven considerations put forward by the Interested Party. Nor was there any indication of why any potential harm to the Green Belt was "clearly outweighed" by other considerations.

66. In summary, at the very minimum, the Defendant was required to identify the circumstances which were capable of being "very special", the reasons why they were "very special" in the case, and briefly, why they disagreed with the Planning Officer's conclusions. It had not done so. As a result, the mischief identified in Siraj §15 was present: the Claimant could not ascertain whether the Committee had interpreted the Green Belt policy correctly and taken into account all relevant matters. Indeed there was no evidence that the Committee had even turned their minded to consider whether "very special circumstances" existed, or, if they had, whether they had addressed their minds to the correct legal test to be applied. The reference, in the Minutes and in the Decision Notice to the concept of "significant or unacceptable harm" gave rise to a real risk that the Committee in fact adopted or applied the wrong test.

67. Whilst the Claimant submitted that the inadequacy was particularly relevant to the residential use aspect of the permission, his case was that there was an overall failure to give adequate reasons, which applied to the decision as a whole.

68. *The Interested Party submitted* that "summary reasons" were not intended to present a full account of the local planning authority's decision making process. He accepted that the Minutes and the Decision Notice could have been better drafted, but this is not a question of precise interpretation; it is sufficient for the reader to be able to understand how and why permission has been granted. The Claimant can understand from the reasons given why planning permission was granted and can ascertain whether the Defendant correctly understood and applied the "very special circumstances test". In the present case, whilst the reasons given were brief, when read in light of the Report it is obvious that the issue of "very special circumstances" was properly considered and that the Committee accepted the Report as regards the 20 pitch site, but did not accept the Report's view that *in this instance* there was no need for a residential manager. The Interested Party submitted that the following statement could be spelt out from the Minutes "Members feel that the proposed residential use was appropriate for this campsite, contrary to the view of the Planning Officer".

69. In the Report, the Planning Officer had identified seven considerations, which he considered were *capable* of amounting to very special circumstances, *if* , as matter of fact, a residential manager was necessary. In fact, the Planning Officer had concluded that a residential manager was not necessary. Had he concluded to the contrary on this issue of "fact", the Planning Officer would have found that very special circumstances existed. The Committee, on the other hand, concluded to the contrary on this issue of fact; and it follows therefore, that those seven considerations, potentially identified by the Planning Officer, had been found to exist by the Committee and were the "very special circumstances". In this way, the Committee necessarily accepted the seven considerations identified by the Planning Officer, and merely disagreed on that one issue — whether the business could be operated without a residential manager. The Committee's decision was based on nothing more than a factual finding as to the requirement to have a residential manager.

Analysis

70. First, and strictly, it is the summary reasons given in the Decision Notice which are relevant: see Article 31(1)(a) of the Order. At the very least it is these reasons which are the starting point for consideration of this issue.

71. Secondly, this is a case where the council did not follow the advice of the planning officer. Whilst it is the case, that the Committee did in part follow the Planning Officer's recommendation, nevertheless the part which it did not follow (relating to the residential manager) was a very substantial element of the planning application. On this aspect, the Report contained detailed reasons for recommending refusal. In these circumstances, when the Committee was taking a decision contrary to those detailed reasons, the Committee was required to give sufficient reasons to enable the Claimant and any other party to understand why that advice had not been followed, and to ascertain whether the Committee had interpreted and applied the relevant policy correctly. Accordingly, in principle, this was a case where fuller summary reasons might well be necessary, and the question is whether a member of the public can ascertain, from the Report or the Decision, whether the Committee correctly interpreted the relevant policies and took all relevant matters into account and disregarded irrelevant matters: see paragraph 9 above, propositions (5) to (8). This meant that some explanation, however brief, had to be given by the Committee as to what the very special circumstances were, why they amounted to very special circumstances, and, further, why the Committee did not accept the reasons given by the Planning Officer for reaching the opposite view in relation to the residential manager.

72. Thirdly, turning to the Decision Notice itself, the relevant reasons are contained, principally, in the paragraph in Note 1 set out at paragraph 56 above. There it is stated that it is considered that both elements of the proposed development "is supported by very special circumstances and therefore is acceptable at this location and would not result in any significant harm". Whilst there is reference to "very special circumstances", what those circumstances are, were not identified. These reasons are minimal. (By contrast, in Siraj , four specific factors were expressly identified in the summary reasons (§9), and

from §§23 and 24 of his judgment, it is clear that Sullivan LJ regarded their specific identification (even in a "follow" case) as an important element of reasons which he found to be sufficient). It is the case that in the section dealing with conditions, the Decision Notice does refer, in its reasons for Condition 11, to "inappropriate development" and to the need for justification by very special circumstances, and, further, the framing of the Condition 11 itself appears to suggest that the residential manager is required to provide security and to manage the site.

73. Even if the Minutes can properly be taken into account, as forming part of the required "summary reasons", in my judgment, they do not expand upon or clarify the reasons for the decision. Whilst, in contrast to the Note in the Decision Notice, they do refer distinctly to the residential use aspect of the permission and to the fact that the Committee is not following the planning officer's recommendation, in my judgment, on their face, the Minutes contain not only no explanation of, but no reference at all to, very special circumstances, nor of the Committee's reasons for disagreeing with the Report. Moreover the reference to residential use being "appropriate" and to the concept of "significant or unacceptable harm to the Green Belt" raise doubts as to whether the correct approach had been taken by the Committee to the "very special circumstances" test.

74. I turn to the Interested Party's submission that, because the Committee found "as a fact" that a residential manager was required, it follows that the "very special circumstances" it found were the seven considerations she had put forward in the application.

75. First, the Interested Party put forward seven considerations as very special circumstances. Five of those considerations related specifically to the asserted need for a residential manager. The Report rejected those considerations and recommended refusal of permission. The Committee in turn rejected that recommendation. In my judgment, it does not follow, necessarily, merely from this sequence of events (and without any further explanation) that the Committee accepted any one or more of the seven considerations put forward by the Interested Party as being "very special circumstances" justifying development in the Green Belt. For my part, I doubt very much whether, in a case where the planning officer's recommendation is not followed, it is appropriate effectively to do no more than to refer the reader back to that officer's report to try to work out, by way of inference, the reasons for the contrary conclusion. Even if it is appropriate, it does not answer the question why the council differed. At most, in some circumstances, there might be an inference from "the rejection of the rejection" that the considerations advanced in the first place were the relevant "very special circumstances" found by the council. However, in the present case, that inference cannot be drawn and certainly would not necessarily be drawn by an interested party. First, the *express* reasons given in Note 1 and in the Minutes are suggestive of the application of a different approach (significant and acceptable harm); secondly, it is not clear whether the Committee accepted all of the seven considerations or only some of them, and, if so, which.

76. Secondly, there is no express statement that the Committee did "find as a fact" that a residential manager was *necessary* (and that the alternatives put forward in the Report were not acceptable). Such reasons as are given in the Decision Notice and the Minutes suggest a conclusion that a residential manager was "acceptable" or "appropriate". If indeed the Committee did so expressly decide, then given that they were differing from the Report, this should have been included in the summary reasons.

77. Thirdly, and, most importantly, no reasons at all are given as to *why* the Committee concluded that a residential manager was *necessary* (if it did so conclude) or appropriate, and *why* in this respect they did not accept the Report. In the Report, and indeed in his earlier report, the Planning Officer had given detailed reasons as to why he did not consider that there was a need for a residential manager: a small site office could be provided; the applicant lived nearby; very limited need for presence to deal with an overnight emergency; seasonal fluctuations in occupancy; no greater risk of crime; and reasonable level of security could be provided in any event. In its reasons, the Committee does not deal with any of these matters, nor even say why it disagrees with the Officer's reasons. As a result, it is not possible to ascertain (a) whether the Committee rejected some or all of the Planning Officer's reasons for recommending refusal nor (b) whether the Committee accepted some or all of the "seven considerations" advanced by the Interested Party.

78. In circumstances where the Planning Officer has given, in the Report, detailed reasons for concluding that very special circumstances did not exist and where he had effectively reached this conclusion on two distinct occasions, this was a case where fuller summary reasons were necessary and the Committee was required to give a summary of its reasons why they did not accept his recommendation nor his reasons. It did not do so. As to Condition 11, even if its wording can be read as identifying two matters as "very special circumstances", there remains no explanation as to why those matters amount to "very special circumstances" and why the Committee disagreed with the reasons in the Report.

79. A consideration of all relevant material leads to the conclusion that it is not possible in this case for the Interested Party (or indeed any relevant third party) to ascertain from the reasons given for the Decision whether the Defendant properly interpreted or applied the "very special circumstances" test, and what considerations it did or did not take into account.

80. Accordingly, I conclude that, in breach of its duty under Article 31(1)(a)(i) of the Order, the Defendant failed to give an adequate summary of their reasons for granting permission in the Decision.

Issue (2): consequences of failure to provide adequate reasons

81. The first question is whether, in this case, the appropriate remedy for the breach of the duty to give reasons is an order to quash the Decision, or, alternatively, an order directing the provision of reasons or a declaration of breach of duty.

82. The Interested Party submitted that, in the present case, the normal remedy for failure to provide adequate reasons of a quashing order is not appropriate and that one of the other two alternative courses should be adopted. She relied upon the decisions in Macrae and Prideaux , as cases where, despite a breach of the duty to give reasons, the remedy considered appropriate was, respectively, a declaration of breach and an order directing further reasons. She submitted that she will suffer prejudice if the Decision is quashed, and that the Claimant will suffer no prejudice, if the Decision is not quashed.

83. In Macrae, the Court of Appeal itself emphasised that there must be powerful reasons for not quashing a decision notice which did not include adequate summary reasons. The question here is whether there are such "powerful reasons".

84. In my judgment, the conclusions on remedy in Macrae and Prideaux are distinguishable from the present case on the facts. Most significantly, in Macrae the key consideration which led the Court of Appeal merely to make a declaration of breach was the fact that there was no continuing challenge to the substantive validity of the underlying planning decision: see paragraph 15 above. By contrast, in the present case, the Claimant does contend that the Decision is unlawful, not merely because of the technical failure to give reasons, but, on Ground 2, because of a substantial failure to interpret or apply the "very special circumstances" test. Here, whilst ultimately it is a matter for the Defendant, given the Claimant's stance, it is not "inconceivable" (nor "most unlikely") that the Defendant, on redetermination, would reach a different conclusion — for example, by refusing to grant permission in whole or in part. Accordingly, the justification for a declaratory remedy in Macrae does not apply here.

85. Further, as pointed out by Pill LJ in Macrae , if, instead, reasons were to be ordered, there remains a risk of "ex post facto" reasoning in circumstances where 10 months has elapsed since the relevant Committee meeting took place. I note too that the Defendant itself has not contended that it should be given the opportunity to state its reasons; it has not objected to the Decision being quashed. Given the underlying rationale for quashing a decision where reasons are inadequate, and given the difficulty in understanding here the Committee's approach to the "very special circumstances" test, I consider that an order to state reasons is not the appropriate remedy in this case.

86. As regards Prideaux , the relevant prejudice to the claimant, the absence of which in that case justified an order for reasons rather than a quashing order, was the prejudice of not being able to ascertain the reasons for the decision: see §168. (It was not financial or more general prejudice to the claimant.) That prejudice is the prejudice identified by Sullivan LJ in Siraj at §15. However that reasoning does not apply here. Prideaux was a case where the council had followed the planning officer's recommendation and the reasons could be "readily seen" in the officer's report. The present case is a "not follow" case, and, as explained above, the Committee's reasons cannot be seen from the Report. In the present case, the prejudice (as contemplated by Lindblom J in §168) of not knowing the basis of the Defendant's decision *does* arise.

87. As to prejudice to the Interested Party, she has gone ahead and invested in, and operated, her camping and caravanning business at the Site. Although it is accepted that, if the permission is quashed, the Defendant is most unlikely to take enforcement action, pending reconsideration of a further application for permission, I was told that, for as long as there is no planning permission in place for the Site, then the Interested Party will not have a valid site licence from the relevant environmental health department, and for that reason, will not be able to operate the business in any such interim period. I was also told that, because of the pending proceedings, the Interested Party has not in fact taken bookings going forward. I accept that, at least pending the redetermination of her application for planning permission, the Interested Party may well suffer some prejudice in the form of lost business; although given that summer has now passed, I do not know how substantial such loss of business may be. I also note that the Interested Party has known, since February this year at the latest, of the present challenge to the planning permission, and of the fact that the Defendant itself agreed to it being quashed. Carrying on her business thereafter was done in knowledge of the risk of the permission being set aside. In many cases where planning

permission is subsequently quashed, the beneficiary will or may suffer prejudice if he or she has continued to act on the basis of the ongoing validity of that permission. Whilst I have some sympathy with the Interested Party's position, I do not consider that this provides a sufficient "powerful reason" not to quash the Decision.

88. I conclude that, in principle, the appropriate remedy here is to quash the Decision.

Issue (3): Whether to quash the Decision in part only

89. The Interested Party further submitted that any quashing order should relate only to that part of the Decision which granted planning permission in respect of residential use of the mobile home; planning permission should remain in respect of the 20 pitch site. The deficiency in reasoning arose only in respect of the second aspect of the permission, the residential use of the mobile home. The Claimant maintained that, even if there is scope for quashing a planning permission in part only, whether the grant of permission for the 20 pitch site was dependent on the grant of permission for the residential manager was, and remains, a matter of planning judgment and one properly for the Defendant; on that basis, the Decision should be quashed in its entirety.

90. For the reasons given in paragraph 38 above, I consider that there is power to quash a planning permission in part, and that, in an appropriate case that might be done. The question is whether this is such an appropriate case.

91. The question then is whether the grant of planning permission for the 20 pitch site is dependent upon, or "inextricably mixed up with" the grant of permission for the residential manager. Put another way, "would the Defendant have granted permission for the 20 pitch site, if, for whatever reason, they had not at the same time granted it for the residential manager"?

92. The Interested Party advanced, and I accept, the following considerations. First, the Claimant did not directly impugn the summary reasons in so far as they related to the grant of permission for the 20 pitch site. Secondly, and more importantly, the Planning Officer separated out the two aspects of the proposal, addressed the issues in respect of each separately n the Report and recommended a split decision. The Minutes also seem to suggest that the Committee gave some distinct consideration to the two aspects, and seem to acknowledge that a split decision might have been an option.

93. Nevertheless, despite these considerations, I am not satisfied that partial quashing is appropriate. First, even if the summary reasons given were inadequate because, very largely, they did not explain the Committee's reasons in relation to the residential manager (the need for which arose in turn because of the failure to follow the Report), nevertheless, strictly, the breach of the duty in Article 31(1)(a) relates to the decision notice in its entirety i.e. the duty is to include in the single notice an adequate summary of reasons, and here that duty was breached. Secondly, and more significantly, I accept that the question of whether the "good" was dependent on the "bad" was a matter of planning judgment for the Defendant council, and further that, as in Kingsway , I must consider what the Defendant council would have done, if it had not been able to grant permission for the "bad". Even if in the Report, the Officer considered that permission could have been granted in part, this does not answer the question whether the Defendant would have been prepared to grant permission for the 20 pitch site, without at the same time granting permission for the residential manager. It is not sufficiently clear to me that they would have been so prepared. The application for permission was "entire" — the mobile home was stated to be "included" within the use as a 20 pitch site. The Interested Party's case in her application did not distinguish between the two aspects; it was that a residential manager was necessary in order to operate the 20 pitch site. Some of the relevant factors in favour of the application applied to both aspects. Thirdly, it is noteworthy that the Defendant itself has consented to the quashing of the Decision in its entirety, and has not advocated partial quashing only.

94. In my judgment, in order to be satisfied that a partial quashing order is appropriate, I would need to be satisfied (as in Kingsway) that, had it been told that it could not grant permission for the residential manager, the Committee would clearly have proceeded to grant permission for the 20 pitch site alone. On the material before me, I am not so satisfied. It is possible that the Committee would have concluded that, because they could not grant permission for a residential manager, they would not have granted permission at all. If, in fact, the Committee were of the view that the site could not operate properly without a residential manager, then they may not have granted permission at all. Accordingly, the Decision will be quashed in its entirety.

Ground 2: failure to interpret Green Belt policy

95. The Claimant's case is that the Defendant failed properly to interpret paragraphs 87 and 88 of NPPF. As regards the 20 pitch site, *the Planning Officer's* approach to the "very special circumstances" test was erroneous, and, assuming that in fact the Committee adopted that approach, it too erred. If it did not follow the Officer's approach, then any other approach it may

possibly have adopted must also have been wrong. As regards the residential manager, the Committee asked itself the wrong question, and in answering it, failed to apply the correct approach to policy. I have received detailed submissions on Ground 2, in particular from the Claimant, on the content and interpretation of the very special circumstances test and its application by the Defendant in the present case. These submissions were advanced on the hypothesis that I did not find for the Claimant on all aspects of Ground 1. From consideration of these submissions, I am satisfied that Ground 2 is sufficiently arguable to justify the grant of permission to apply for judicial review.

96. However, in the light of my conclusions above on Ground 1, a decision on Ground 2 is not necessary. Moreover, in my judgment, a ruling, in the alternative, upon Ground 2 is not appropriate, for the following reasons.

97. First, the Interested Party submitted that I should not proceed to rule upon Ground 2. More particularly, the Claimant indicated, in oral argument, that if I found in his favour on Ground 1, he would prefer that I should not go on to consider Ground 2.

98. Secondly, the Defendant has not made submissions to the Court on Ground 2, despite having indicated earlier its disagreement with the Claimant on Ground 2. I accept that, as a result of events between March and August 2013, the Defendant was fully aware that the Claimant intended to proceed with both Grounds at the rolled up hearing and was provided with the Claimant's grounds and skeleton, including the argument on Ground 2. If I had decided *not* to quash the Decision on Ground 1, I would not have considered the Defendant's non-appearance as a bar to proceeding to determine Ground 2. However, it is certainly arguable that the terms of the agreement reached between the Claimant and the Defendant in March 2013 (paragraph 58 above) make it, at the very least, unfair to proceed to determine Ground 2 in the Defendant's absence and in the circumstances which have arisen. As a matter of construction of that agreement, the Claimant and the Defendant agreed that, if the Decision was *not* quashed on Ground 1, the parties, including the Defendant, would be free to contest Ground 2; the implication being that, if the Decision *was* quashed on Ground 1, then the Claimant agreed not to pursue Ground 2.

99. Thirdly, both the Claimant and the Interested Party will have a further opportunity to put their arguments to the Defendant on the application of the “very special circumstances” test in the present case, in the event that further application is made by the Interested Party.

100. Finally, were the decision to quash on Ground 1 to be the subject of an appeal, and if, in that event, the Claimant sought to rely on Ground 2, he will be able to put his arguments on that appeal. None of the parties has suggested that I should express my views on the issues for the purposes of any such appeal.

Conclusions

101. I am satisfied that the Claimant's case, both on Ground 1 and on Ground 2, is arguable, and I therefore grant permission to apply for judicial review.

102. In view of my conclusions at paragraphs 80, 88 and 94 above, I conclude that the Decision Notice did not include an adequate summary of the Defendant's reasons for granting planning permission and that the appropriate remedy for that breach of duty is that the Decision should be quashed.

Consequential matters

103. I will hear submissions on the appropriate terms of the order, if the parties are unable to agree. I propose dealing with this and other consequential matters, including costs, immediately following the handing down of this judgment, unless any party requests that they be dealt with subsequently and in which event, I will give further directions as to the procedure to be followed, including for the service of written submissions.

104. I am grateful to Mr. Simons and Mr Smith for their assistance to the Court in the presentation of oral and written argument in this matter.