Neutral Citation Number: [2021] EWHC 1323 (Admin)

Case No: CO/3500/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/05/2021

Before :

THE HONOURABLE MRS JUSTICE TIPPLES DBE

- -

Between :

THE QUEEN (on the application of MALCOLM CROSS)	**Claimant**
- and -	
CORNWALL COUNCIL	**Defendant**
- and –	
CHRIS WILTON	**Interested Party**

- -
- -

Mr Ben Fullbrook (instructed by **Richard Buxton Solicitors**) for the **Claimant**
Mr Sancho Brett (instructed by **Cornwall Legal Services**) for the **Defendant**
Ms Kate Olley (instructed by **Kingsley Smith Solicitors LLP**) for the **Interested Party**

Hearing dates: 24th and 25th February 2021

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Approved Judgment

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10am on Friday 21st May 2021.

The Honourable Mrs Justice Tipples DBE :

Introduction

1. The claimant seeks judicial review of the decision of the Defendant ("**the Council**") dated 17 August 2020, granting planning permission to the Interested Party ("**Mr Wilton**") for the development of a detached two storey agricultural dwelling with garage and parking ("**the proposed development**") on land adjacent to Rame Cottages, Rame Head, Torpoint, Cornwall, PL10 1LH ("**the site**").

2. The site is located on Ramehead Lane (to the north west of the cottages). This is within the Cornwall Area of Outstanding Natural Beauty ("**AONB**") and on the Heritage Coast.

3. The decision was taken by the East Sub-Area Planning Committee of the Council ("**the Committee**").

4. The claimant is a local resident who lives about a mile from the site and has lived with his family on the Rame Peninsula for over 30 years. The claimant is concerned about the preservation of Rame Head because of its natural beauty, rare wildlife and history and is worried about the adverse impact any unsuitable development may have in the area. He objected to Mr Wilton's application for planning permission for the proposed development ("**the application**"), and has formed the Rame Protection Group. It is in that context he brings this claim. The Council dispute that he has any standing to do so.

5. The Council is the local planning authority and Mr Wilton is the owner of the site.

6. On 9 November 2020 Lieven J granted the claimant permission to judicially review the Council's decision to grant Mr Wilton planning permission on grounds 1 and 2 of the grounds of challenge pleaded in the claimant's statement of facts and grounds.

Grounds of challenge

7. The claimant submits that the Council's decision to grant planning permission was unlawful on two grounds:

    a. **Ground 1**: Breach of duty to give reasons. The Committee failed to provide adequate reasons as to why the Committee departed from the recommendations in the Officer's Report ("**OR**") and those made by the AONB Officer, in particular with regard to the impact on the AONB. Adequate reasons cannot be discerned from the minutes of the Committee meeting on 17 August 2020 or from the transcript of that meeting.

    b. **Ground 2**: Failure to determine whether or not, and the extent to which, the proposed development accords with the development plan. The Committee misinterpreted policy 7 of the Cornwall Local Plan – Strategic Policies 2010 – 2030 (adopted 22 November 2016; "**the Local Plan**"); the Committee failed to consider the extent to which the proposed development accorded with policy 23 of the Local Plan, policy 5 of the Rame Peninsula Neighbourhood Development Plan (made 28 June 2017; "**the RPNDP**") or policy MD9 of the Cornwall AONB Management Plan 2016-2021: Place and People ("**AONB Management Plan**"); and the

Committee failed to reach any conclusion on the extent to which the proposed development would conserve and enhance the character and natural beauty of the landscape and AONB.

8. In response, the Council and Mr Wilton submit:

    a. **Ground 1**: There was no statutory duty to give reasons, and this was not a case in which the common law duty to give reasons arose. However, the point is academic as the Council did provide reasons which were adequate in the circumstances. These are set out in the minutes of the meeting and are supported by the transcript of the meeting.

    b. **Ground 2**: The Committee did not misinterpret or fail to apply any of the applicable policies set out in policies 7 and 23 of the Local Plan, policy 5 of the RPNDP5 or MD9. Rather, the Committee fully understood the issue of the impact on the landscape and the special weight to be applied to it. They had reached a different view to the AONB Officer on the extent of that impact and had decided that the justification of policy 7 of the Local Plan had more weight.

Factual background

The dwelling

9. In relation to the proposed development, the dwelling will provide two bedrooms at ground floor along with an office and boot room, whilst the first floor will provide two further bedrooms and open plan kitchen, dining and living space, along with a large balcony that wraps around the north west and south west elevations. The dwelling will have a pitched roof and would be finished with render, timber effect cladding and stone under a slate roof with grey aluminium or upvc windows.

Mr Wilton and his family

10. Mr Wilton is a farmer and, together with his father, is the joint tenant of Penmillard Farm, Rame. They were granted the tenancy in 2014, although Mr Wilton's family appear to have occupied the farm for over 200 years. The landlord is the Mount Edgcumbe Estate, which owns much of the land nearby. In a letter from Michelmore Hughes, agents for the Mount Edgcumbe Estate, Mr Wilton and his father are described as "First Succession AHA tenants" of Penmillard Farm.

11. Penmillard Farm is 281 acres. There is one dwelling at Penmillard Farm, which is occupied by Mr Wilton's parents (who are in their 70s) as a requirement of the tenancy agreement. Mr Wilton, his partner and two young children are also living in the farmhouse. The Mount Edgcumbe Estate have told Mr Wilton that he would not be granted permission to build a dwelling for a farm worker on Penmillard Farm, nor would they sell him any land on which to construct such a dwelling.

12. Mr Wilton operates a diversified farming business which includes a Countryside Stewardship Scheme covering around 100 acres of Rame Head which has a strict series of

grazing and other environmental requirements. At present the grazing is carried out by Dartmoor ponies. There is also a commercial sheep flock with 300 breeding ewes and a livery business which, in 2020, extended to 16 horses. The remainder of the land is used for cereals, fodder beet for local dairy farms, daffodils and arable crops. The farm also has a five-site Caravan and Camping site, together with seven temporary dwellings which are let out.

13. The proposed development is to provide a home for Mr Wilton and his family. The site is 370 metres to the south west of the main farmyard, and is the only land owned by Mr Wilton in the vicinity. Nevertheless, the site remains in the centre of Penmillard Farm with good access to, amongst other things, the coastal areas and sheep grazing.

Pre-application advice

14. On 9 December 2019 Mr Wilton submitted a pre-application advice form to the Council. Thereafter he had a site meeting with Ms Davina Pritchard, the Council's Principal Development Officer, Planning and Sustainable Development Service ("**the Planning Officer**").

15. By a letter dated 25 February 2020 the Planning Officer wrote to Mr Wilton setting out her pre-application advice. She described the site as being located "in a highly sensitive and exposed cliff top setting in Rame". The letter identified that the County Land Agent, having considered the relevant functional and financial tests, confirmed that there appeared to be a case for the provision of an agricultural worker's dwelling on the site. However, she explained that that would need to be balanced against any adverse impact on the landscape and scenic beauty of the AONB and Heritage Coast in which the site was located. She strongly encouraged Mr Wilton to commission a Landscape and Visual Impact Assessment ("**LVIA**") and to seek advice from the Cornwall AONB team.

16. In March 2020 Mr Wilton obtained the LVIA from Anne Priscott CMLI, and that was in due course submitted with the application.

17. Mr Wilton also sought a pre-application consultation from the Cornwall AONB Unit. Mr Jim Wood, Cornwall AONB Planning Officer ("**the AONB Officer**"), attended at the site and on 8 April 2020 wrote to Mr Wilton setting out his pre-application advice. The letter made it clear that the advice provided was entirely independent of that recently provided by the Planning Officer, and only considered matters "directly related to the primary purpose of the designated landscape; that of the conservation and enhancement of the landscape and scenic beauty of the AONB".

18. The AONB Officer explained to Mr Wilton that:

> "In the light of the location of the proposed development and its location on the skyline ridge, development of the type envisaged is likely to be conspicuously visible. Any such visibility would be harmful to the landscape of the area, with the open skyline ridge leading to Rame Head itself an important and defining feature of this part of the AONB….

> The critical aspect of the landscape that is likely to be impacted by any development is the important skyline between Rame church and Rame Head. Any building that was conspicuously visible interrupting this would fail the test of being "sensitive to the defining characteristics of the local area". The current building envisaged would be an example of a building which did not deliver this requirement.
>
> It is not the remit of this consultation to identify a suitable building form and this would be required from your professional team. I would however suggest that a suitably designed single storey dwelling which is carefully related to the existing ground levels and some form of earth sheltering **MIGHT** deliver the policy requirement of NPPF 79… I realise that this response probably provides you with a unique challenge. This is however in the light of the very sensitive site within an iconic part of the AONB and which under any normal circumstances we would seek to resist development on."

The planning application

19. Notwithstanding the advice received from the AONB Officer, in May 2020 Mr Wilton applied for planning permission in respect of the proposed development (PA20/03747). The claimant submitted a detailed objection to the application on 16 June 2020.

20. The proposed development was supported by the Maker-with-Rame Parish Council ("**the Parish Council**"). The decision making in this regard is not entirely clear, although that does not matter for present purposes. However, it did not involve Mr Wilton, who was at the time the Chairman of the Parish Council.

The Planning Officer's Report

21. The OR was a detailed and comprehensive report dated 17 August 2020 and it is necessary to refer to it in some detail. The first page of the OR identified the reason for the application being called to the Committee as follows:

> "At the request of the adjoining Local Divisional member; Jesse Foot CC who is acting on behalf of the Local Divisional member for the Rame Peninsula due to a close association with [Mr Wilton]. The reason for calling the application to committee is so that the agricultural needs of the holding for an additional farm workers dwelling can be fully assessed against the impact of the development on the Area of Outstanding Natural Beauty."

22. The first heading in the OR was "Balance of Considerations and Conclusion" and this explained that:

> "The main issue in respect of this proposal is the impact on the AONB landscape. Whilst long distance views of the proposed development from Whitsand Bay and from Military Road will be relatively limited, comprising views of the slate roof of the development, the proposed dwelling will be highly conspicuous from close distance view points including the views from Ramehead Lane itself, from the public footpath which runs to the immediate north of the site and from The Lookout at Rame Head and the associated public car park. From these viewpoints, the development will be highly visible and dominant and will introduce new built form on the opposite side of the road

> from the existing cottages, where the proposed development as a result of its position, scale, materials and design will form a prominent and incongruous addition that will be harmful to the landscape and scenic beauty in this part of the AONB. It is not considered that the addition of landscaping or screening will sufficiently mitigate the impact of the development.
>
> In meeting the definition of sustainable development, the proposal will have economic benefits in providing justified accommodation to support an established farming business, which also plays an important role in managing the sensitive coastal landscape on Rame Head. Furthermore, the development will provide a new home for a family who are currently living in unsuitable accommodation shared with relatives. However, the proposal as a result of the position, scale, materials and design fails to conserve or enhance the landscape and scenic beauty of the AONB. This weighs heavily against the proposed development.
>
> Whilst there is considerable sympathy with the applicant's position and the economic and social benefits of the development are acknowledged, together with the positive efforts of the applicant in helping to manage the AONB landscape through the Countryside Stewardship Scheme, this is not considered to outweigh the negative impact of the development on the AONB landscape. On balance, therefore the application is therefore refused."

23. In relation to the Development Plan, the OR identified (amongst other things):

    a. The RPNDP - Policy 5: General Development (Visual Impact, Design and Biodiversity).

    b. The Local Plan – Policy 7: Housing in the countryside; Policy 23: Natural environment.

24. The consultation responses were then set out. This explained that the Parish Council had voted in favour of the proposed development on the basis that the effects of the proposed development were "considered to be very localised with minimal impact on the landscape", any harm was considered to be negligible and needed to be "weighed against the benefits of the proposed development in providing additional accommodation and necessary infrastructure in direct support of a local and rural business".

25. The views of the Cornwall AONB unit in opposing to the proposed development were then set out, which included the following:

> "In the light of the location of the proposed development and its location on the skyline ridge, development of the type envisaged will be conspicuously visible. This visibility will be harmful to the landscape of the area, with the open skyline ridge leading to Rame Head itself, an important and defining feature of this part of the AONB. We recognise there are already detractors from this characteristic landscape in the form of the Coastguard lookout, Ramehead Cottages and the seasonal presence of caravans. The existing presence of these other elements elevate the sensitivity of the receiving landscape such that development proposed would be particularly harmful to the designated and protected landscape of this part of the Rame section of the AONB giving rise to unacceptable cumulative effects...

> The proposed dwelling with its scale, mix of materials and extensive glazing and glazed balustrade will form a prominent new skyline landmark and will be particularly conspicuous at night with light spill into this otherwise substantially dark landscape. The proposed dwelling appears to pay little respect to its setting. Instead offering an unwelcome assertive presence.
>
> The application documents include a Landscape and Visual Appraisal which considers the effects of the proposed dwelling on both the landscape character and visual amenity. The methodology adopted for this appraisal does not set out clearly how susceptibility and value have been considered in arriving at findings of receptors. In this landscape which is designated at a national level this is considered to be a critical omission and one which as observed in the assessment leads to a general understatement of the development proposed…
>
> If there is a requirement for an agricultural dwelling, it is our view that, in landscape terms, and hence in line with the AONB policy, this should be located in a more discrete location. Any new agricultural dwelling should be locationally and architecturally closely related to the existing cluster of farm buildings to minimise its visibility and to allow it to relate to the characteristic clustering pattern of farm buildings away from the more visually and climatically exposed ridgelines and plateaux.
>
> The AONB enjoys the very highest level of landscape protection, equal to that of National Parks. The primary purpose of the designation is to conserve and enhance the natural beauty of the area and planning policy requires that development within the AONB deliver this purpose.
>
> We do not consider that the development of a residential dwelling in this location addresses the requirements of MD9. Likewise, it does not respond to the AONB's sensitivity and character whilst conserving and enhancing the landscape character and natural beauty of the AONB and we object to it on this basis."

26. The Countryside Access Team had no objection to the proposal. The Ramblers Association raised a point on access. The Cornwall Council County Land Agent concluded that Mr Wilton had shown there was "a good case to be made for a second unit of accommodation". This was on the basis that:

> "with limited access to additional land the applicant and his family before him have developed a diversified business with a mix of livestock and other enterprises. The livestock element, involves about 1.75 members of staff and the other business enterprise; temporary accommodation units utilised for short-term stay and wedding accommodation plus the Caravan and Camping enterprise do require some on site presence ..."

27. The OR then set out that representations had been received in opposition to the proposed development, and in support of it. The key planning related points were then summarised. The information in the papers before me show that objections were received from the Rame Conservation Trust, the South West Coast Path Association and the Chair of Cornwall CPRE (who agreed with all that had been said by the Cornwall AONB unit). There were, in total, 137 letters of objection to the proposed development. The NFU supported the

application, and 40 individuals provided comments on the planning portal in support of the application (many of whom appeared to know Mr Wilton or his family).

28. The OR then stated that the application needed to be assessed against the Development Plan policies and any other material considerations. The key issues were identified as including: agricultural need; the impact on the AONB and Heritage Coast; the impact on the historic environment; the impact on highway safety; the impact on the amenities for neighbouring occupiers; and ecology. The OR set out the policies in the Development Plan in respect of each of these issues and, in particular, policies 7 and 23 of the Local Plan, policy MD9 of the AONB Management Plan, policy 5 of the RPNDP and that the "AONB clearly enjoys the very highest level of protection, equal to that of National Parks" (see paragraph 172 of the National Planning Policy Framework 2019 ("**NPPF**")). In relation to agricultural needs, the OR noted the Cornwall Council County Land Agent had identified a good case for a second unit of accommodation.

29. The Planning Officer's conclusion in relation to the impact on the AONB and Heritage Coast, was expressed in these terms:

> "[44.] The Case Officer has fully considered the submitted [Landscape and Visual Impact Assessment] LVIA, the comments of the Cornwall AONB team and conducted a site visit to assess the proposed development. It is clear from the submitted viewpoints within the LVIA and the Case Officer's own assessment of the site, that long distance views of the proposed development from Whitsand Bay and from Military Road will be relatively limited, comprising limited views of the slate roof of the development. It is also considered the impact of the development on dark skies could be controlled via planning condition and it is of note that there is a streetlight in close proximity to the site which lights the access road to Ramehead Cottages. However, the sentiments of the AONB team in relation to the closer distance viewpoints including the views from Ramehead Lane itself, from the public footpath which runs to the immediate north of the site and from The Lookout at Rame Head and the associated public car park are endorsed. From these viewpoints, the development will be highly visible and dominant and will introduce new built form on the opposite side of the road from the existing cottages, where the proposed development as a result of its position, scale, materials and design will form a prominent and incongruous addition that will be harmful to the landscape and scenic beauty in this part of the AONB. Whilst the design of the dwelling proposed could sit comfortably on another site, which is less exposed and less prominent, it is considered the design put forward fails to reflect the character of built form in the immediate setting through the use of glazing in the gable elevations, the wrap around balcony, the use of timber effect cladding and the unusual chimney detail."

30. The OR did not identify any adverse impact against the Development Plan policies in relation to any of the other issues identified.

31. The OR concluded by recommending that the application be refused for the following reasons:

> "The proposed development as a result of its siting, scale, materials and design will result in a prominent and incongruous addition to the coastal plateau that will harm the landscape and distinctive scenic beauty of the Cornwall [AONB] and Heritage Coast. The social and economic benefits of the development do not outweigh the landscape

> harm. The proposed development is contrary to Policy 5 of the [RPNDP], Policy 23 of the [Local Plan], Policy MD9 of the [AONB Management Plan] … and paragraphs 170 and 172 of the [NPPF]".

The Committee meeting: 17 August 2020

32. On 17 August 2020 the meeting of the Committee was conducted remotely. The meeting was scheduled to start at 10am and the proposed development was the second application on the agenda. I have been provided with a full transcript of this meeting which runs to 42 pages ("**the transcript**").

33. The minutes of the meeting ("**the minutes**") record that 14 councillors were present, which included the Chairman Councillor Batters and the Vice-Chairman Councillor Parsons. The officers present were the Democratic Officer (Rowena Brebner), Senior Lawyer (Loretta Commons), Development Officer (Samuel Fuller) and Group Leader (Davina Pritchard, the Planning Officer). I was informed by Mr Brett, Counsel for the Council, that the minutes were prepared by the Democratic Officer.

34. The minutes record that the Planning Officer outlined the application, which included showing plans and photographs to the Committee, and she summarised the key issues. She recommended that the application be refused. The AONB Officer spoke against the application. John Shepherd, the Vice-Chairman of the Parish Council, spoke in support of the application, as did the Applicant. Councillor Foot (Adjacent Electoral Division Member) agreed that the application should be refused.

35. The minutes then record that the officers responded to members' questions, and that:

> "A full and detailed debate ensued, the main points of which were noted as follows:- 1. The management of the Coastline was essential; 2. The proposal was not suitable for its location and should be refused; 3. The proposal would not be visible from the sea and should be supported; 4. The proposal did not fit in with the iconic site within an AONB; 5. The proposal was poor in terms of mass, size and design."

36. The decision of the Committee is then recorded in these terms:

> "Arising from consideration of the report and debate it was moved by the Vice-Chairman [Councillor Parsons], seconded by Councillor Flashman, and on a vote of 7 votes in favour, 6 votes against and no abstentions, it was:-
>
> RESOLVED that Application No. PA20/03747 be approved subject to the following conditions:-
>
> [The seven conditions included conditions that the development had to be begun within three years of the date of the permission (condition 1), the occupation of the dwelling was limited to "a person solely or mainly working, or last working, in the locality in agriculture as defined by section 336(1) of the 1990 Town and Country Planning Act or in forestry, or widow or widower of such a person, and to any resident dependents, and in addition shall not be occupied otherwise than by a person as his or her only or Principal Home. For the avoidance of doubt the dwelling shall not be occupied as a

second home or holiday letting accommodation" (condition 3) and, prior to first occupation of the dwelling, construction of new hedgerows around the site (condition 4).] …

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

37. The minutes record that the meeting finished at 1.05pm and, "although the minutes, once agreed and signed, are the formal record of the meeting", they also provide a link to a video recording of the meeting. On 14 September 2020 the Committee resolved that the minutes of the previous meeting on 17 August 2020 were correctly recorded subject to the following sentence being included at the end of the minute relating to this matter: "Noted That Councillor May left the meeting during consideration of the above item, at 12.49pm".

Transcript of the Committee meeting

38. There is a dispute between the parties as to what extent, if at all, the transcript can be relied on, which I shall deal with below. However, there is no dispute that the transcript is an accurate record of what was said at the meeting.

39. I have read the transcript in full and it shows, amongst other things, that:

    a. The Planning Officer provided a detailed presentation with photographs to the Committee explaining why "the officers are of the opinion that notwithstanding that Penmillard Farm is just down the road … officers are of the opinion that notwithstanding the agricultural justification, the harm to the AONB from siting a dwelling in this position … is too great .. and therefore, the application is recommended for refusal …". The AONB Officer said he was in complete agreement with the Planning Officer's analysis.

    b. Mr John Shepherd, the Vice-Chairman of the Parish Council, said that the Parish Council "overwhelmingly supported this application" because Mr Wilton's "need for an essential dwelling for the local farm, as confirmed by the County Land Agent, … outweighed the limited effect to the AONB". He said that the Parish Council considered "the impact of this development on its surroundings to be negligible". In response to a question from the Chairman of the Committee, Mr Shepherd confirmed the proposed development was not over development in a "very, very, very sensitive area".

    c. Mr Wilton told the Committee that County Land Agent had "confirmed there was an essential need for the farm to have a second dwelling, and the location was central to the farm's landholding …". He also said that "the identified harm to the AONB is low, with minimal impact from distance views, as confirmed by the Planning Officer's report and LIVA" and that "short range views can be mitigated by planting four metre plus established trees on the west and east boundaries, also improving biodiversity and habitats. The dwelling is not an isolated building in the open countryside, being adjacent to an existing terrace of six cottages".

d. Councillor Foot, the adjoining division member, agreed with the recommendations of the Planning Officer and the AONB Officer that the application be refused.

e. Cllr Flashman spoke in support of the proposed development on the basis that, amongst other things, Mr Wilton was managing the coastline (which was essential for access to the coastal path), his family had lived at Penmillard Farm for 200 years and the building could be screened on two sides. Cllr Parsons also spoke in support of the proposed development as "the site sits within a natural bowl" and Mr Wilton was part of a farming family managing the landscape.

f. Cllr Batters spoke against the proposed development on the basis that it was "out of character, over developed for that area". Cllr Mould said she would like to see a "more modest design". Cllr Long said that "we've got two competing policies here and it's a question of where the balance lies between the two, my issue I've got with this is the size of it". Cllr Holley spoke against the proposed development on the basis that that "this is such a sensitive site" and "what this comes down to is that this building doesn't reflect the needs of the AONB there. It's too big, it's too high, it's too modern". Cllr Eddy expressed concerns about the mass, size and design of the proposed development. Cllr Burden was concerned to understand what land the agricultural condition should be connected to as Mr Wilton does not own any land, other than the land on which the proposed development is to be built.

40. Following the debate, the Chairman of the meeting, Cllr Batters, invited Cllr Parsons to identify his reasons for opposing the recommendation in the OR. Cllr Parsons did so in these terms:

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

41. The Planning Officer said that reason was reasonable and that the "issue here, as everybody knows, is about the balance of considerations, so the agricultural need versus the AONB landscape". The Chairman then proposed to the Committee that the application be approved against the Planning Officer's recommendation for the reasons identified by Councillor Parsons. The Councillors then voted and this proposal was carried by seven votes to six. Cllrs Craker, Eddy, Flashman, Greenslade, Williams, Pascoe and Parsons voted in favour. Cllrs Burden, Holley, Long, Mould, Pugh and Batters voted against.

42. The claimant filed evidence from Councillor May. Her evidence, contained in a witness statement dated 25 September 2020, was that she was called away from the meeting due to personal reasons and was unable to vote. However, she has read the transcript of the meeting and confirmed that, if she had been present, she would have voted against the application being granted.

The grant of permission

43. On 17 August 2020 the Council granted Mr Wilton conditional permission, subject to the seven conditions set out in the schedule, for the proposed development.

44. On 8 September 2020 the claimant's solicitors sent a pre-action protocol letter to the Council and the judicial review claim form was issued on 29 September 2020.

Legal framework and the Development Plan

45. In a claim for judicial review, the claimant must establish a public law error on the part of the decision-maker. The exercise of planning judgment and the weighing of various issues are matters for the decision maker, and not for the court (see, most recently, *R (Corbett) v The Cornwall Council* [2020] EWCA Civ 508 at paragraphs [65] and [66]). Further, an application for judicial review is not an opportunity to review the planning merits.

46. The determination of an application for planning permission must be made in accordance with the development plan, unless material considerations indicate otherwise (section 70(2) of the Town and Country Planning Act 1990; section 38(6) of the Planning and Compulsory Purchase Act 2004 ("**the 2004 Act**")).

47. The national policy expressed in the NPPF is a material consideration. So far as material, paragraphs 170 and 172 (which were in force on 17 August 2020) provide as follows:

> "[170.] Planning policies and decisions should contribute to and enhance the natural and local environment by: (a) protecting and enhancing valued landscapes …; (b) recognising the intrinsic character and beauty of the countryside …; (c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate …
>
> [172.] Great weight should be given to conserving and enhancing 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 these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within these designated areas should be limited…"

48. The relevant policies in the development plan are policies 7 and 23 of the Local Plan and policy 5 of the RPNDP. Policy 23 of the Local Plan in turn cross-refers to policy MD9 of the AONB Management Plan. The AONB Management Plan is not part of the development plan, but is a material consideration. These polices, so far as material, are set out below.

49. Policy 7 in the Local Plan provides that:

> "*Policy 7: Housing in the Countryside*. The development of new homes in the open countryside will only be permitted where there are special circumstances. New dwellings will be restricted to: … 5. Full time agricultural and forestry and other rural occupation workers where there is up to date evidence of an essential need of the business for the occupier to live in that specific location."

50. Policy 23 provides that:

> "*Policy 23: Natural environment*. 1. Development proposals will need to sustain local distinctiveness and character and protect and where possible enhance Cornwall's natural environment and assets according to their international, national and local significance. 2. **Cornish Landscapes**. Development should be of an appropriate scale, mass and design that recognises and respects landscape character of both designated and un-designated landscapes. Development must take into account and respect the sensitivity and capacity of the landscape asset, considering the cumulative impact and the wish to maintain dark skies and tranquillity in areas that are relatively undisturbed, using guidance from the Cornwall Landscape Character Assessment, and supported by the descriptions of Areas of Great Landscape Value… **2(a). The Cornwall and Tamar Valley Area of Outstanding Natural Beauty.** Great weight will be given to conserving the landscape and scenic beauty within of affecting the setting of the AONB. Proposals must conserve and enhance the landscape character and natural beauty of the AONB and provide only for an identified local need and be appropriately located to address the AONB's sensitivity and capacity. Proposals should be informed by and assist the delivery of the objectives of the Cornwall and Tamar Valley AONB Management Plan including the interests of those who live and/or work in them … **2(b). The Heritage Coast and Areas of Great Landscape Value.** Development within the Heritage Coast and/or Areas of Great Landscape Value should maintain the character and distinctive landscape qualities of such areas…".

51. Policy MD9 of the AONB Management Plan provides:

> "Any necessary development in or within the setting of the AONB will be high quality sustainable development that: is appropriately located, of an appropriate scale and addresses landscape sensitivity and capacity; is compatible with the distinctive character of the location described by the Landscape Character Assessment, with particular regard to the setting of settlements and the rural landscape; … is designed to respect quality of place in the use of distinctive local building styles and materials, dark skies and tranquillity …"

52. Finally, policy 5 of the RPNDP provides:

> "**General Development (Visual Impact, Design and Biodiversity) (Area Wide)**. The Rame Peninsula NDP area has many environmental designations which make it very sensitive to development and any proposed development will only be supported where it is: (i) compliant with National and Local Policy; (ii) compliant with other policies within this plan; (iii) …; (iv) is sited to minimise its visual impact on the landscape; (v) …; is consistent with the character of the particular area in which it is sited; (vii) is designed so as to reflect locally distinctive character, traditional building styles and local materials; (viii) …".

53. Next, I want to briefly consider the relevant principles of decision-making and standing before turning to the grounds themselves.

Decision-making

54. Lord Carnwath JSC set out the legal principles to be applied in respect of the standard of reasons in *R (CPRE Kent) v Dover District Council* [2018] 1 WLR 108, SC ("***CPRE Kent v Dover DC***") at paragraphs [35] to [37] and [42]. Lord Carnwath explained that a "broad summary" of the relevant authorities governed reasons challenges was given by Lord Brown in *South Buckinghamshire District Council v Porter (No. 2)* [2004] 1 WLR 1953 ("***South Bucks v Porter***"), paragraph 36:

> "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in dispute, not to every material consideration… A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has been genuinely been substantially prejudiced by the failure to provide an adequate reasoned decision".

55. Then, at paragraphs [41] and [42] of *CPRE Kent v Dover DC* Lord Carnwath explained:

> "[41]. … Where there is a legal requirement to give reasons, what is needed is an adequate explanation of the ultimate decision …
>
> [42] … In the case of a local planning authority that function will normally be performed by the planning officer's report. If their recommendation is accepted by the members, no further reasons may be needed. Even if it is not accepted, it may normally be enough for the committee's statement of reasons to be limited to the points of difference. However, the essence of the duty remains the same, as does the issue for the court: that is, in the words of Bingham MR in [*Clarke Homes Ltd v Secretary of State for the Environment* [2017] PTSR 1081, 1089] whether the information so provided by the authority leaves room for "genuine [as opposed to forensic] doubt … as to what [it] has decided and why"."

56. In *CPRE Kent v Dover DC* at paragraph [60] Lord Carnwath quoted with approval the advice, which he described as "useful", provided by the Lawyers in Local Government Model Council Planning Code and Protocol (2013) update under the heading "Decision-making":

> "Do make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the *planning reasons* leading to this conclusion/decision. <u>These reasons must be given prior to the vote and be recorded</u>. Be aware that you have to justify the resulting decision by giving evidence in the event of any challenge." (<u>underlining</u> added)"

57. That guidance makes it clear that the planning reasons must be given prior to the vote and be recorded. This is because a committee, such as the Committee in this case, "expresses itself by voting on a resolution and the minute then forms the public record of its decision. In normal circumstances, the decision can only be ascertained by reference to the terms of the resolution" (see *R (Shelley) v Carrick DC* [1996] Env LR 273, Carnwath J ("***Shelley***") at 283). The reasons cannot be identified from the debate because, as was explained by Schiemann J in *R (Beebee) v Poole Borough Council* [1990] 2 PLR 27 ("***Beebee***") (at 31E):

> "All one knows is that at the second that the resolution was passed the majority were prepared to vote for it. Even in the case of an individual who expressly gave his reasons in council half an hour before, he may well have changed them because of what was said subsequently in debate."

58. It is not permissible to look at extraneous documents to which the statement of reasons do not refer "and in effect [conduct] a "paper chase" though the local planning authority's minutes": see *R (Macrae) v County of Herefordshire District Council* [2012] EWCA Civ 457 ("***Macrae***"), per Sullivan LJ at paragraph [28]).

59. Therefore, if, in this case, there was a common law duty on the Council to give reasons, any such planning reasons should have been identified prior to the vote at the Committee's meeting on 17 August 2020. The minutes of that meeting should then record publicly the resolution passed by the Committee at the meeting on 17 August 2020.

60. The claimant does not concede that the transcript of the whole meeting is admissible for the purpose of identifying the planning reasons for the Committee's decision. In my view, it is not. If the Council is under a common law duty to give reasons, then it was obliged to identify clearly the planning reasons for departing from the OR prior to the vote. The transcript of the Committee's full debate in relation to the proposed development is an extraneous document, which was not referred to in the reasons and does not form part of them. It is clear from the decision of the Court of Appeal in *Macrae* that hunting through other documents in order to identify the reasons for a decision is not permitted. Further, the fact that, as a result of the Covid-19 pandemic, there was a video recording of the meeting, which was then available on-line after the meeting does not, in my view, alter the basic principles in relation to the manner in which the planning reasons for a decision, which requires reasons, are identified and recorded.

61. I should also mention the recent case of *R (Hudson) v Royal Borough of Windsor and Maidenhead* [2019] EWHC 3505 (Admin) ("***Hudson***"), which the Council and Mr Wilton relied on. Mr Fullbrook, for the claimant, correctly pointed out that in that case the claimant had conceded that the Council was entitled to rely upon the transcript of the proceedings in the meeting when assessing the adequacy of the reasons given. Lang J was satisfied that the resolution, "when supplemented by the transcript of the meeting, the conditions and section 106 Agreement, gives reasons which are adequate and intelligible and meets the standard set out by Lord Brown in the *South Bucks* case" (see paragraphs [59] and [61]). Nevertheless, the judge then made this observation at paragraph [62]:

> "… as a matter of good practice, local planning authorities should set out adequate reasons in the Minutes (or an annexe thereto), and not rely on a transcript of the meeting as the source of their reasons. It is often difficult for members of the public to discern reasons from a lengthy transcript, in which members are expressing different views,

particularly when, as in this case, only an audio recording is posted on the planning website."

62. In my view, *Hudson* does not assist the Council or Mr Wilton in this case. This is because in the light of the authorities in relation to collective decision making, such as *Shelley* and *Beebee* (which were not cited in *Hudson*), the transcript of a planning committee's debate is not admissible for the purpose of identifying the planning reasons for the committee's decision, and the transcript cannot be relied on for that purpose. It is not therefore just a matter of good practice that local planning authorities are unable to rely on a transcript of the full meeting as the source of their reasons. Rather, they are unable to do so because a committee, such as a planning committee, expresses itself by voting on a resolution, and the decision can only be ascertained from the terms of the resolution passed at the meeting, the public record of which should then be in the minutes: see *Shelley*.

Standing

63. Mr Brett, Counsel for the Council, submits that the claimant does not have a sufficient interest in the matter to which the application relates under section 31(3) of the Senior Courts Act 1981. This is because the claimant lives more than a mile from the site and his "general concerns about the adverse impact of unsuitable development" do not amount to a sufficient interest. The Council also points to Mr Wilton's evidence which is that the claimant does not live on the Rame Peninsula. Rather, Mr Wilton maintains that the claimant lives in the Deviock area and his home near to the site is not on the Rame Peninsula, the proposed development cannot be seen from it and this property was in any event a second home, which has been recently sold.

64. Mr Fullbrook, Counsel for the claimant, submits that the Council's objection to standing is hopeless in the present context and directed my attention to *R (Edwards) v Environment Agency* [2004] 3 All ER 21, Keith J at 26j-27b; *Walton v The Scottish Ministers* [2012] UKSC 44 at paragraphs [86], [87] and [115] and *R* (*Oakley) v South Cambridgeshire District Council* [2017] 1 WLR 3765, CA ("***Oakley***") at paragraph [58].

65. I cannot accept the Council's argument. It seems to me obvious that the claimant has standing to bring this claim. Apart from anything else, he filed a detailed objection to the application. On top of that, he has formed the Rame Protection Group and the nature of the proposed development in the AONB is a point of wider public interest. The fact that the claimant will be unable to see the proposed development from the property he owns, or owned, a mile from the site is neither here nor there.

66. Turning now to the grounds of challenge.

Ground 1: breach of duty to give reasons

67. It is necessary for me to consider whether: (a) the Council was under a common law duty to provide reasons in this case; and (b) whether the reasons can be inferred in any event from the materials available.

Duty to give reasons

68. There is no statutory duty on local planning authorities to give reasons for the grant of planning permission. However, it is well established that, in certain circumstances, a local planning authority may be under a common law duty to give reasons for the grant of planning permission: see *CPRE Kent v Dover DC* at [50] to [60]. Fairness requires the provision of reasons in such circumstances.

69. The circumstances were identified by Lord Carnwath in *CPRE Kent v Dover DC* in these terms:

> "[59.] … it should not be difficult for councils and their officers to identify cases which call for a formulated statement of reasons, beyond the statutory requirements. Typically they will be cases where, as in [*Oakley*] and the present case, permission has been granted in the face of substantial public opposition and against the advice officers, for projects which involve major departures from the development plan, or other policies of recognised importance (such as the "specific policies" identified in the NPPF – para 22 above ["specific policies" by which "development is restricted"; including those relating to protected sites under the Birds and Habitats Directives, Green Belts, Areas of Outstanding Natural Beauty, and National Parks]). Such decisions call for public explanation, not just because of their immediate impact; but also because, as Lord Bridge pointed out (paragraph 45 above), they are likely to have lasting relevance for the application of policy in future cases."

70. In *CPRE Kent v Dover CC* the Supreme Court approved the decision in *Oakley* where the Court of Appeal had held that the common law duty to give reasons arose because:

    a. "The decision in this case involved a development on the Green Belt and was also in breach of the development plan. Public policy requires strong countervailing benefits before such development can be allowed, and affected members of the public should be told why the committee considers the development to be justified notwithstanding its adverse effect on the countryside. In my judgment these considerations demand that reasons should be given …" (per Elias LJ at paragraph [60]).

    b. "That conclusion is … reinforced where the committee departs from the officer's recommendation. The significance of that fact is not simply that it will often leave the reasoning obscure. In addition, the fact the committee is disagreeing with a careful and clear recommendation from a highly experienced officer on a matter of such potential significance to very many people suggests that some explanation is required … the dictates of good administration and the need for transparency are particularly strong here, and they reinforce the justification for imposing the common law duty" (per Elias LJ at paragraph [61]).

    c. "Where the public interest in ensuring that the relevant decision-maker has considered matters properly is especially pressing, as in cases of grant of planning permission as a departure from the development plan or in cases of grant of planning permission as a departure from the usual protective policy in respect of the Green Belt, that is a factor capable of generating an obligation to provide reasons. This is because requiring the giving of reasons is a way of ensuring that the decision-maker

> has given careful consideration to such a sensitive matter … Although it might be said that decisions to allow development in the Green Belt or contrary to the development plan are not aberrant as such, in that such decisions are not uncommon and cannot be assumed to be irrational. I think that they do give rise to an important onus of justification on the part of the decision-maker which, taken with the parallel public interest considerations in such cases, grounds an obligation under the common law to give reasons in discharge of that onus" (per Sales LJ at [79]).

71. Mr Fullbrook, for the claimant, submits this is a case which is a paradigm example of a situation where a common law duty to give reasons applies. This is because the Committee granted planning permission for development in a highly sensitive area, contrary to strong advice from the Planning Officer and the AONB Officer, and in the face of substantial public opposition.

72. Mr Brett, for the Council, submits that the particular circumstances of this case did not give rise to the common law duty to give reasons. The duty does not arise simply because the Committee departed from the Planning Officer's recommendation in the OR; the "controversy" in relation to the proposed development was not sufficient, particularly as the proposed development is "one dwelling in the context of established development (Rame Cottages)", and was supported by the Parish Council, the Cornwall Council Land Agent, the NFU and residents of neighbouring properties; there is no significant departure from the development plan; this was "not a case of significant impact on Green Belt policies"; and it is possible to infer the Committee's reasons from the material available to the public. In his oral submissions Mr Brett summed up the Council's position by submitting that this is a very discrete application for a single farm dwelling at the centre of farming land, without widespread opposition to the extent that happened in *Oakley*. The necessary criteria for the Council to give reasons does not therefore arise.

73. Ms Olley, who appeared for Mr Wilton, took a neutral stance at the hearing as to whether there was any obligation on the Council to give reasons.

74. I do not accept Mr Brett's submissions. This case called out for a formulated statement of reasons in respect of the Council's decision to grant planning permission in respect of the proposed development. The factors which give rise to the common law duty in this case are as follows:

    a. The site of the proposed development is in a highly sensitive cliff-top setting in Rame which is on the Heritage Coast and in the AONB.

    b. The OR recommended that the application be refused because (i) the siting, scale, materials and design of the proposed development would harm the landscape and distinctive scenic beauty of the AONB and Heritage Coast; (ii) the social and economic benefits of the proposed development did not outweigh the landscape harm; and (iii) the proposed development was contrary to policy 5 of the RPNDP, policy 23 of the Local Plan, Policy MD9 of the AONB Management plan and paragraphs 170 and 172 of the NPPF. This was a very clear recommendation, based on a number of reasons, which the Committee departed from and, in doing so, granted permission which departed from the development plan.

c. The AONB Officer recommended that the application be refused because the proposed development would give rise to unacceptable harm to the AONB. This again was a clear recommendation, which the Committee departed from.

d. There was extensive public opposition to the proposed development, evidenced by the 137 letters of objection.

75. Therefore, whilst it is right that the proposed development is "only for one dwelling", that submission overlooks the particular, and highly sensitive, location of the site for the proposed development which is on a cliff-top setting in an "iconic part" of the AONB. The highly sensitive nature of the site is reflected by the extensive opposition which the proposed development has generated. There were over 130 letters in opposition which, on any footing, is a significant number in respect of an application for a single dwelling. Further, the Council's reference to the application as being only for one dwelling fails to take into account the scale, materials and design of the proposed development and the impact these will have on the highly sensitive location of the site. On top of that, the Council granted permission against the clear advice of its Planning Officer and the AONB Officer. Looked at in this context, it is clear to me that this is a case where the Council was under a common law duty to give reasons for the grant of planning permission.

Formulated statement of reasons

76. The formulated statement of reasons must be given prior to the vote and recorded.

77. Mr Fullbrook took the point that, in this case, the only reasons identified prior to the vote were those of the proposer (Councillor Parsons), who identified <u>his</u> reasons for opposing the Planning Officer's recommendation that permission be refused, and these were not a formulated statement of the Committee's reasons for opposing the Planning Officer's recommendation. Further, an examination of the transcript of the meeting (after the debate had concluded) shows that the reasons voted on by the Committee are not correctly recorded in the minutes of the meeting on 17 August 2020. Rather, the minutes include additional reasons, which were not in the terms of the resolution voted on at the meeting of the Committee.

78. The Committee voted on Councillor Parsons' reasons for opposing the Planning Officer's recommendation, which are set out at paragraph 40 above. The minutes, produced after the meeting, recorded that "the reasons given by the Proposer for wishing to approve the application were that the proposed development accords with policy 7 of the Cornwall Local Plan Strategic Policies 2010-2030, <u>where the agricultural justification and need for a workers dwelling is considered to outweigh the harm to the landscape and scenic beauty of the Cornwall Area of Outstanding Natural Beauty</u>" (<u>underlining</u> added). The words underlined do not form any part of reasons articulated by Councillor Parsons, and do not therefore form any part of the resolution passed at the meeting.

79. In this context, Mr Fullbrook submits that it is not appropriate for the court to infer a decision maker's reasons from minutes, transcripts or other extraneous documents and, on top of that, the reasons of a collective decision-making body cannot readily be inferred from the expressed views of an individual member.

80. Mr Brett deals with this point at paragraph 66 of his skeleton argument, where he says this:

> "[The claimant's] suggestion that the minutes cannot be relied on to remedy its failure to provide a statement of reasons is nonsensical and demonstrates a misunderstanding of the democratic process. The minutes expressly contain the Committee's reasons for approving the [planning application] as set out above. This is the way in which things said at Committee meetings are usually recorded. There is no legal requirement to reiterate reasons in some other form."

81. Mr Brett also points to the fact that the minutes were approved at the next meeting of the Committee in September 2020, subject to the addition of a sentence which records that Councillor May left the meeting. However, Mr Brett did not direct me to any authority to show that this was determinative of the issue.

82. I do not accept Mr Brett's submissions.

83. In general minutes form evidence of the matters to which they refer, which can be relied on in civil proceedings. When minutes are signed by the chairman of the meeting, or the next succeeding meeting, they are prima facie evidence of the proceedings, and the decisions recorded in them are deemed valid until the contrary is proved: see *Shackleton on the Law and Practice of Meetings* (14th Edition, 2017) at paragraphs 8-07 and 28-09; *Encyclopaedia of Local Government Law* Vol 1, paragraphs 2-68.1, and 2-674 (General Note - paragraph 41). The minutes are not therefore exclusive or conclusive evidence of what took place at the meeting.

84. In this case the transcript of the meeting on 17 August 2020 (none of which is in dispute, in terms of what was said) shows that:

    a. The planning reasons which led to the Committee's decision to grant permission for the proposed development were the reasons contained in the proposal put forward by Councillor Parsons, which were seconded by Councillor Flashman.

    b. Councillor Parsons identified those reasons at the request of the Chairman.

    c. The Chairman then asked the Planning Officer whether she wished to say anything in respect of these reasons. In response, she said that she thought that "that reason is reasonable" and she then said "the issue here, as everybody knows is about the balance of considerations, so the agricultural need versus the AONB landscape". However, no time was taken at the meeting to prepare a statement of reasons limited to the points of difference between the Committee and the Planning Officer's recommendation.

    d. The Chairman then put a proposal to the members of the Committee to vote upon. The proposal was that the application be approved against the Planning Officer's recommendation for the reasons identified by Councillor Parsons. That proposal was voted on, and approved, by the Committee and was the resolution passed at the meeting.

85. In these circumstances, the reasons for the decision to grant planning permission for the proposed development were those identified by Councillor Parsons, and they were adopted

by the Committee as a whole when it voted in favour of the proposal to approve the planning application. However, those reasons were not the same as the reasons recorded in the minutes. The minutes do not therefore contain an accurate record of the reasons "given by the Proposer [Councillor Parsons] for wishing to approve the application …" and do not contain the statement of reasons approved by the meeting. This is because the reasons set out in the minutes, are not the reasons which were voted on by the Committee, and the public record of those reasons in the minutes is wrong. Further, as the minutes are inaccurate and post-date the meeting I agree with Mr Fullbrook that they are an extraneous document which cannot assist in identifying what the Committee's reasons for approving the application were.

Standard of reasons

86. The reasons must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues" (*South Bucks v Porter* at paragraph [36]). In the present context, the issues to which the statement of reasons should be addressed were, at the very least, the points of difference between the Committee and the Planning Officer's recommendation that permission be refused: see *CPRE Kent v Dover DC* at paragraph [42].

87. Mr Brett, for the Council, submits that the key issue of "controversy" was whether the justification of the need for an agricultural worker's dwelling outweighed the harm to be caused to the AONB. Ms Olley, for Mr Wilton, agreed with this in her oral submissions. However, in her skeleton argument Ms Olley submitted that the principal controversial issue was correctly identified in the OR as the impact on the AONB landscape.

88. Mr Fullbrook, for the claimant, submits that the principal important controversial issues were five-fold. However, the points he identified were much more wide-ranging than the difference between the Committee and the Planning Officer's recommendation. Indeed, there was no issue as to whether the "essential need" criterion identified in paragraph 5 of policy 7 of the Local Plan was satisfied, as the Planning Officer had accepted confirmation from the County Land Agent that there was "a good case for a second unit of accommodation". Therefore, whether or not there were special circumstances permitting development of a dwelling for an agricultural dwelling in the open countryside was not a controversial issue, let alone an issue which was one of the principal important controversial issues.

89. In my view, the key issues can be identified by reference to the Planning Officer's reasons for recommending that planning permission be refused and are essentially two-fold. First, whether the proposed development would cause harm to the landscape and distinctive scenic beauty of the AONB and Heritage Coast. Second, whether the social and economic benefits of the proposed development outweighed the landscape harm to the AONB and Heritage Coast.

90. Therefore, if members disagreed with the view of the Planning Officer, which was also the view of the AONB Officer, that the proposed development would harm the landscape and distinctive scenic beauty of the AONB, it was critical to understand the basis of their belief that the Planning Officer's view was wrong or over-stated. This would require an explanation from the Committee as to why the siting, scale, materials and design of the

proposed development would not result in a prominent and incongruous addition to the coastal plateau which harmed the landscape of the AONB. Likewise, if members disagreed with the Planning Officer's view that the social and economic benefits of the proposed development were outweighed by the landscape harm to the AONB, it was critical to understand why they took a different view. Again this would require explanation.

Ground 1 - Conclusion

91. It is plain that the reasons contained in the resolution passed at the meeting on 17 August 2020 do not articulate any reasons identifying why, in respect of these two key issues, the Committee departed from the Planning Officer's recommendation. Further, the reasons provided by Councillor Parsons are not, and were not prepared as, a formulated statement of reasons from the Committee directed at explaining the points of difference between the Committee and the Planning Officer's recommendation. There is no adequate explanation of the decision to grant planning permission.

92. For example, it is not possible to tell whether the Committee thought the harm caused by the proposed development was, contrary to the advice of the Planning Officer, minimal. Therefore, if the Committee disagreed with the Planning Officer's view that as a result of its siting, scale materials and design, the proposed development would be highly conspicuous from closer distance view points (ie Ramehead Lane, The Lookout at Rame Head, and the public footpath to the immediate north of the site) the Committee needed to explain why they disagreed with her advice. If, on the other hand, the Committee thought that the harm caused by the proposed development to the AONB was mitigated by Mr Wilton's contribution to maintaining it, the Committee needed to explain this. Again, it is impossible to tell whether this is what the Committee thought or not.

93. The same points can be made in relation to the second issue. One is completely in the dark as to why the Committee thought the social and economic benefits of the proposed development outweighed the landscape harm. No reasons at all are provided.

94. Further, if the resolution passed at the meeting is accurately set out in the minutes (contrary to the conclusion set out above), then the outcome is the same. This is because the reason recorded in the minutes is a statement that "the agricultural justification and need for a workers dwelling is considered to outweigh the harm to the landscape and scenic beauty of the Cornwall [AONB]". That statement is simply a conclusion and does not articulate any planning reasons which led to that conclusion. There is no explanation which identifies the reasons why the proposed development justified damaging the AONB, an area which enjoys the highest level of landscape protection. The minutes do not explain why the Committee departed from the recommendation of the Planning Officer, and reached the view that they did.

95. Ground 1 is therefore made out.

Ground 2: failure to determine whether or not, and the extent to which, the proposed development accords with the development plan

96. In the light of my conclusion on ground 1, I can take ground 2 more briefly.

97. The correct general approach to the application of section 38(6) of the 2004 Act was set out by Lord Clyde in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, by reference to a corresponding section of the Scottish legislation (section 18A of the Town and Country Planning (Scotland) Act 1972). In the very familiar passage (at p. 1459), which has been cited frequently, Lord Clyde explained:

> "In the practical application of section 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him, and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan, which is relevant to the application or fails to properly interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan."

See also: *R (Milne) v Rochdale Metropolitan Borough Council* [2001] Env LR 22, Sullivan J at paragraph [48]; and *BDW Trading Ltd v Secretary of State for Communities and Local Government* [2017] PTSR 391, CA at paragraph [21].

98. Mr Fullbrook for the claimant submits that the Council breached its section 38(6) duty for a number of reasons. His principal submission was that the Committee misinterpreted policy 7 of the Local Plan. Mr Fullbrook submits that the reference to policy 7 in the minutes suggests that the Committee understood itself to be undertaking a balancing exercise between the agricultural need for the proposed development and the harm to the AONB and that, as a result, the demonstration of such need was sufficient to justify harm to the AONB. This is not correct as a matter of interpretation. Policy 7 contains the criteria that must be met to justify the development of new homes in the countryside in general; it does not mention the AONB. Policy 23 makes clear that development in the AONB must meet additional criteria. Specifically, it must conserve and enhance the landscape character and natural beauty of the AONB. This interpretation is consistent with the particular need to give "great weight" to the conservation of the AONB set out in paragraph 172 of the NPPF. In these circumstances, the Committee was wrong to conclude that, just because there was an agricultural need, the harm to the AONB could be justified within the terms of policy 7.

99. Mr Brett, for the Council, submits this ground is misconceived. First, the Committee consisted of experienced members who knew the area and who were very familiar with the relevant policies (ie policies 7 and 23 of the Local Plan, policy 5 of the RPNDP and policy MD9 of the AONB Management Plan) and the status of the AONB. Second, policy 7 makes no mention of policy 23 or policy 5 of the RPNDP, and is not subject to them. Third, the claimant has misunderstood the Council's task in considering whether an application is in accordance with the development plan. Fourth, the claimant ignores the "fundamental issue" that Mr Wilton has been maintaining and managing the landscape of the AONB in the surrounding area for many years, and the Committee considered the relevant matters under policy 23 in granting permission.

100. Likewise, Ms Olley for Mr Wilton submits there is no basis for the "highly unrealistic suggestion" that members misinterpreted policy 7, and there is "no credible suggestion" to be made that members mis-applied policy 23 or the other relevant policies as a whole, or paragraph 172 of the NPPF.

101. It is correct that policy 7 of the Local Plan does not refer to policy 23 of the Local Plan or policy 5 of the RPNDP. However, policy 7, which is entitled "Housing in the countryside", is concerned with "the development of the new homes in the open countryside". The open countryside may or may not be in designated or un-designated landscapes and policy 23, entitled "Natural environment", is likely to be relevant in any event. Policy 23 is certainly relevant in the context of development proposals for a new dwelling in the AONB. Policy 23 identifies that in relation to the AONB:

    a. Development should be of an appropriate scale, mass and design that recognises and respects landscape character of designated landscapes (ie the AONB; paragraph 2).

    b. Great weight will be given to conserving the landscape and scenic beauty within or affecting the setting of the AONB (paragraph 2(a)).

    c. Development proposals must [1] conserve and enhance the landscape character and natural beauty of the AONB and [2] provided only for an identified local need and [3] be appropriately located to address the AONB's sensitivity and capacity. Proposals should be informed by and assist the delivery of the objectives of the Cornwall and Tamar Valley AONB Management Plans.

102. Therefore, if the "essential need" criteria of paragraph 5 of policy 7 are satisfied, this will satisfy the second limb of paragraph 2(c) of policy 23, and possibly also the third limb. However, it will not satisfy the first limb, namely the requirement that the development proposals must conserve and enhance the landscape character and natural beauty of the AONB. This is an additional requirement in relation to development within the AONB set out in policy 23. The consequence of this is that establishing the "essential need" criteria under paragraph 5 of policy 7 does not itself justify development in the AONB, and the Committee failed to properly interpret policies 7 and 23 of the Local Plan. Ground 2 is also made out.

Conclusion

103. I do not accept the submissions made by the Council and Mr Wilton that this is a "technical challenge" on the part of the claimant or that this is a case in which the claimant has not suffered any prejudice and, as a result, the decision should not be quashed. Rather, this is a case where the defects in reasons go to the heart of the justification for permission and undermine its validity. Further, the claimant filed a detailed objection to the application, and the nature of the proposed development in the AONB was of wider public interest. In these circumstances the only appropriate remedy is to quash the Council's decision granting permission and I grant the claimant the relief sought.