

Neutral Citation Number: [2020] EWCA Civ 508

Case No: C1/2019/2179

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MR C.M.G. OCKELTON (sitting as a deputy judge of the High Court)
[2019] EWHC 1022 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 April 2020

Before:

Lord Justice Lewison
Lord Justice Lindblom
and
Lord Justice Leggatt

- -

Between:

R. (on the application of William Corbett)	**Respondent**
- and -	
The Cornwall Council	**Appellant**
- and -	
Stephen Tavener	**Interested Party**

- -

Mr James Findlay Q.C. and Mr Sancho Brett (instructed by **the Cornwall Council**) for the **Appellant**
Mr Ashley Bowes (instructed by **TLT Solicitors LLP**) for the **Respondent**
The Interested Party did not appear and was not represented.

- -

Hearing date: 3 March 2020

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Judgment Approved by the court
for handing down
(subject to editorial corrections)

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 1630 on Thursday, 9 April 2020.

Lord Justice Lindblom:

Introduction

1. The basic question in this appeal is whether a local planning authority erred in law in granting planning permission for a development it found to be in conflict with development plan policies for the protection of Areas of Great Landscape Value but compliant with other relevant policies, including a policy encouraging development for tourism, and thus in accordance with the plan as a whole.

2. With permission granted by Hickinbottom L.J. on 5 November 2019, the appellant, the Cornwall Council, appeals against the order dated 1 May 2019 of Mr C.M.G. Ockelton, Vice President of the Upper Tribunal (Immigration and Asylum Chamber), sitting as a deputy judge of the High Court, by which he quashed the council's grant of planning permission for development proposed by the interested party, Mr Steven Tavener, on land to the east of the Sun Haven Valley Caravan Park at Mawgan Porth in Newquay. The respondent, Mr William Corbett, is a parish councillor on the St Mawgan in Pydar Parish Council and leader of its Planning Group. The parish council was an objector to the proposed development.

3. The application for planning permission was made on 11 October 2017. The proposal was described in the application as "Use of land for the stationing of 15 static holiday caravans and 15 holiday lodges, provision of access and car parking". The development would extend the existing caravan site – a site of about 2.7 hectares, with 100 pitches for caravans and tents and 39 static caravans – on to an adjacent field of 1.6 hectares. The site is in the countryside, not in the Cornwall and Tamar Valley Area of Outstanding Natural Beauty, but in the Watergate and Lanherne Area of Great Landscape Value. The council's decision to approve the proposal was taken at a meeting of its Central Sub-Area Planning Committee on 19 February 2018. Planning permission was granted on 1 March 2018. It was challenged by Mr Corbett in a claim for judicial review issued on 11 April 2018.

The issues in the appeal

4. Three main issues arise from the two grounds of appeal and the respondent's notice: first, whether the judge was wrong to hold that the council's decision to grant planning permission was a determination not in accordance with the development plan, because Policy 14 of the Restormel Local Plan, which relates to the effect of development on Areas of Great Landscape Value, prevented permission being granted; second, whether he was wrong to find the council's reasons for granting permission, indicated in the officer's report to committee, were inadequate; and third, whether he should have found that the council acted unlawfully by not identifying Policy 7 of the Cornwall Local Plan: Strategic Policies 2010-2030, which relates to the development of housing in the countryside, as relevant to the proposal.

The policies of the development plan

5. At the time of the council's decision, the development plan for Cornwall comprised the Cornwall Local Plan, adopted by the council in November 2016, and a number of policies in older local plans, including the Restormel Local Plan of October 2001, which were saved by

the Secretary of State for Communities and Local Government in September 2007. Appendix 3 to the Cornwall Local Plan provides a schedule of "saved policies that are not being replaced by the Local Plan policies", which, it says, "will continue to form part of the development plan and … be used in conjunction with the Local Plan". One of the policies in that list is Policy 14 of the Restormel Local Plan.

6. Policy 1 of the Cornwall Local Plan says that "[when] considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework ["the NPPF"] and set out by the policies of this Local Plan", and that it "will work with applicants, infrastructure providers and the local community to find solutions which mean that proposals will be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area".

7. Policy 5 deals with proposals for development that will generate employment or promote tourism:

> "Policy 5: Business and Tourism
> …
> 3. The development of new or upgrading of existing tourism facilities through the enhancement of existing or provision of new, high quality sustainable tourism facilities, attractions and accommodation will be supported where they would be of an appropriate scale to their location and to their accessibility by a range of transport modes. Proposals should provide a well balanced mix of economic, social and environmental benefits.
> … ."

In the text preceding Policy 5, paragraph 2.8 states:

> "2.8 Tourism: The quality of Cornwall's landscapes, seascapes, towns and cultural heritage, enables tourism to play a major part in our economic, social and environmental wellbeing, it generates significant revenues, provides thousands of jobs and supports communities. Our key challenge is to realise this opportunity in better wages through improved quality and a longer season."

8. Policy 7 concerns the development of new housing in the countryside. It states:

> "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:
>
> 1. Replacement dwellings broadly comparable to the size, scale and bulk of the dwelling being replaced and of an appropriate scale and character to their location; or
> 2. [The] subdivision of existing residential dwellings; or
> 3. Reuse of suitably constructed redundant, disused or historic buildings that are considered appropriate to retain and would lead to an enhancement to the immediate setting. … ; or
> 4. Temporary accommodation for workers (including seasonal migrant workers), to support established and viable rural businesses where there is an

essential need for a presence on the holding, but no other suitable accommodation is available and it would be of a construction suitable for its purpose and duration; or

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."

9. Policy 7 is one of a suite of policies for housing development. It is preceded by Policy 6, on "Housing Mix", and followed by Policy 8, on "Affordable Housing". The text for Policy 7, in paragraphs 2.32 to 2.37, explains the council's approach to the provision of housing in the countryside, stressing, in paragraph 2.33, that "[the] Plan seeks to ensure that development occurs in the most sustainable locations in order to protect the open countryside from inappropriate development", and explaining the exceptions to the policy's general restriction on the development of housing in the countryside. Neither in these three policies themselves nor in the text supporting them is there any mention of "tourism accommodation".

10. Policy 23 relates to the effect of development on Cornwall's "natural environment", including its landscape:

> "Policy 23: Natural environment
> …
>
> 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 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(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."

Paragraph 2.153 in the supporting text states:

> "2.153 Area of Great Landscape Value (AGLV):
> Identified on the Local Plan policies map these are areas of high landscape quality with strong and distinctive characteristics which make them particularly sensitive to development. Within AGLVs the primary objective is conservation and enhancement of their landscape quality and individual character."

11. Policy 14 of the Restormel Local Plan concerns proposals for development that would cause "harm" to Areas of Great Landscape Value. It states:

> "AREAS OF GREAT LANDSCAPE VALUE
> Policy 14
>
> (1) Developments will not be permitted that would cause harm to the landscape, features and characteristics of Areas of Great Landscape Value.
>
> (2) The following parts of the plan area are proposed as Areas of Great Landscape Value:
>
> …
> (2) Watergate & Lanherne
> … ."

Paragraph 5.25 of the text explaining that policy states:

> "5.25 These areas have an attractive landscape where the Council considers special controls should exist. Policy 14 recognises that these areas represent landscapes which are of countywide importance and seeks to protect them from inappropriate development. … ."

The council's decision to grant planning permission

12. At the committee meeting on 19 February 2018 the members had before them a report on the proposal, prepared by the council's Senior Development Officer, Ms Michelle Billing. The recommendation in the report was that delegated authority be granted to approve the application. The committee accepted that recommendation.

13. At the beginning of the officers' report, under the heading "Balance of Considerations and Conclusion", the officer said:

> "…
>
> 3. The proposal falls within an Area of Great Landscape Value which is protected under local planning policy.
>
> 4. The impact upon the landscape has been assessed and due to the valley location and the surrounding topography it is difficult to gain any long distance views of the site from public [vantage] points. It is accepted that views of the proposal site would be possible when approaching the site from the west and around the immediate location however the proposal would be seen in context with the existing development, therefore tempering its impact.
>
> 5. A landscaping condition will be imposed to further soften the localised views of the proposal.
>
> 6. It is concluded the proposal would result in a slight/moderate impact upon the AGLV at a localised level.

7. The expansion of existing tourism facilities is supported by both local and national planning policies.

8. The proposal would provide financial investment in the existing business and provide new full time employment which would support rural economic growth.

9. The proposal would not have an adverse impact upon residential amenity due to the significant separation distance.

10. The [council's] highways officer has considered the proposal and has concluded that the proposal would not have a detrimental impact upon highway safety providing the entrance is constructed in accordance with the approved details.

11. Considering the development in accordance with the development plan and the framework as a whole I would give limited weight to the impact upon the AGLV as the views are localised and can be further mitigated by suitable planting and would attribute greater weight to the economic benefits of the proposal.

12. The proposal with the recommended conditions would result in a satisfactory development which would add to sustainable economic growth in rural areas and assist the local tourist industry. The recommendation is to request [delegated] powers to approve the proposal."

14. The officer listed relevant policies of the development plan, including Policies 1, 5 and 23 of the Cornwall Local Plan and Policy 14 of the Restormel Local Plan (paragraphs 15 and 16). The list did not include Policy 7 of the Cornwall Local Plan.

15. She then (in paragraph 17) quoted in full the objection submitted by the parish council, which began in this way:

> "The PC objects to this application.
>
> The proposal would represent a major expansion of the existing holiday park into what is currently agricultural land situated on the opposite (eastern) side of the Retorrick lane. All of this land falls within the Watergate/Lanherne Area of Great Landscape Value and so the first question raised by the application is its effect upon the AGLV which is protected from inappropriate development, first by 'saved' Policy 14 of the Restormel Local Plan, and also by Policy 23 of the Cornwall Local Plan.
>
> … ."

The objection then referred to appeal decisions in which the effect of "holiday development" had been considered, including a decision in September 2017 on an appeal relating to a site at Lower Sticker:

> "…
>
> A further policy issue arises following another appeal in September 2017 in relation to the 'retention of 5 touring caravans for holiday letting' at Sticker, St

> Austell … . There the inspector made the point that "a caravan used for holiday purposes falls within use class C3 (dwelling houses) and therefore Policy 7 of the CLP is relevant["]. That policy states that 'the development of new homes in the open countryside will only be permitted where there are special circumstances' none of which applied. The appeal was therefore dismissed as "the location of the development is in open countryside and is contrary to the policies of restraint in LP Policies 5 and 7 and paragraph 55 of the Framework". Policy 7 is equally applicable to the present application."

The objection went on to contend that Mr Tavener's proposal appeared to the parish council to "fall foul" of saved Policy 14 of the Restormel Local Plan and "not to conform with the explanatory text to Policy 23" of the Cornwall Local Plan.

16. Under the heading "Assessment of Key Planning Issues", the officer said that "[the] planning application needs to be assessed against the Development Plan policies and any other material considerations" (paragraph 25). On the "Principle of Development", she told the members (in paragraphs 27 to 36):

> "27. The application site is located within the countryside where open market housing would not be supported by policy. The application is for change of use of land for the stationing of holiday units, a condition will be imposed to restrict their use to holiday and therefore the proposal … will be considered under policy 5 of the Cornwall Local Plan.
>
> 28. Part 3 of Policy 5 of the Cornwall Local Plan refers to Business and Tourism and that the development of new or upgrading of existing tourism facilities through the enhancement of existing or provision of new, high quality sustainable tourism facilities, attractions and accommodation will be supported where they would be of an appropriate scale to their location and to their accessibility by a range of transport modes. Proposals should provide a well balanced mix of economic[,] social and environmental benefits.
>
> 29. Paragraph 28 of Section 3 of [the NPPF] – Supporting a prosperous Rural Economy – states that local authorities should:
>
> - Support sustainable rural tourism and leisure developments that benefits businesses in rural areas, communities and visitors, and which respect the character of the countryside. This should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres.
>
> 30. The proposed development at Sun Valley Holiday Park is an extension to an existing facility which is relatively self-contained, it has its own shop and recently gained consent for a new games room building … . There is a bus route (with the bus stop immediately outside the entrance) and there are direct links from the park to the public right of way network to connect to Porth, therefore it is well located for tourist accommodation, this leads me to conclude that this proposal is relatively sustainable and accessible when considered against the NPPF tests.

31. The site area of the existing park is 2.7 hectares and has 100 pitches for caravans/tents which have a restricted occupancy from Good Friday to 31st October each year. The site also has 39 static caravans.

32. The proposal seeks to increase the site by 1.6 hectares and station 15 static units and 15 holiday lodges. As the application is a change of use of the land the units would have to comply with the Caravan [Licensing] Act and not permanent buildings.

33. It is considered that the increase in scale of the business is reasonable and the increase of static units would allow the holiday business to enhance the standard of accommodation on the site.

34. The applicants within their statement have included a business case for the proposal, it states that if approved the expansion of the holiday park would require 3 more full time employees and increase part time cleaners and would see an investment of £1.8 million into the park.

35. It is concluded that the proposed scheme, namely the expansion of an existing sustainable tourism facility, which contains existing facilities for patrons of the park in an appropriate location where existing needs are not being met. The scheme would support economic growth and safeguard/create jobs in this rural area. The principle of the proposal would therefore comply with paragraph 28 of the NPPF and policy 5 of the CLP.

36. The identified economic benefit of the area would weigh in favour of the application."

17. On the "Impact upon Landscape Character", having reminded the members that the application site lies within the Area of Great Landscape Value (paragraph 39), she referred to Policy 23 of the Cornwall Local Plan, which, she said, "considers the Natural Environment", and she quoted part 2(b) of the policy ("Development within Areas of Great Landscape Value should maintain the character and distinctive landscape qualities of such areas.") (paragraphs 40 and 41). She then quoted saved Policy 14 of the Restormel Local Plan ("Development would [sic] not be permitted that would cause harm to the landscape features and characteristics of [Areas] of Great Landscape Value.") (paragraph 42 and 43). She then considered in detail the visibility of the application site from various rights of way in the locality, and continued (in paragraphs 56 to 58):

"56. Following my assessment I consider that long distance views of the site are difficult to obtain due to the topography and landscape form of the area combined with the valley location of proposal site. I note that within the Parish Council it is highlighted that the site can be viewed from the Merlin Golf Club, the view point is not accessible by the general public.

57. It is accepted that localised views of the site can be obtained from the approach road and Retorrick Lane, but these glimpses would be seen in context with the existing holiday park and other built development, it would not break the skyline or project into any views and would therefore temper the impact upon the landscape character.

> 58. It is considered that the overall impact upon the Area of Great Landscape Value would be slight/moderate at a localised level which would weigh against the proposal."

18. In other passages of the report the officer advised the members that the proposed development would not, in the light of Policy 22 of the Cornwall Local Plan, involve the loss of "best and most versatile" agricultural land (paragraph 38); that it would not result in a "detrimental impact upon residential amenity" (paragraph 69); that it would not cause "harm to [the] setting" of the listed Gluvian Farmhouse (paragraph 72); that it had not been objected to by the council's highways officer (paragraph 75); and that its "impact on ecology" would be "low" (paragraph 90).

19. At the end of the report, the officer proposed a number of conditions, including a condition limiting the use and occupation of the development (condition 3):

> "3. The 30 pitches hereby permitted shall be used as holiday accommodation only and shall not be occupied as a person's sole or main place of residence. The owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of each individual unit on the site, and of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority.
>
> Reason: To accord with development plan housing policies under which permanent residential accommodation would not normally be permitted on the site and the accommodation, by reason of its construction and/or design, is unsuitable for continuous occupation and in accordance with the aims and intentions of paragraphs 28 and 55 of [the NPPF]."

She also proposed a condition preventing development being begun "until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority" (condition 4).

The judgment in the court below

20. The judge observed that the officer's report contains "no discussion of the possibility that approval of the application would amount to making a decision not in accordance with saved Policy 14, nor of any material considerations that might or would justify a decision otherwise than in accordance with the development plan" (paragraph 21 of the judgment). The council had accepted that the proposed development would have an impact on the Area of Great Landscape Value, and had not suggested that the impact would be other than harmful (paragraph 22). The judge continued (in the same paragraph):

> "22. … If saved Policy 14 means what it says, the plan would require the application to be refused. In these circumstances a decision granting planning permission would be a decision made not in accordance with the plan and would have to have been justified by material considerations indicating the desirability of a determination made otherwise than in accordance with the plan. If, on the other hand, Policy 14 is to be interpreted as not imposing a prohibition on the grant of

> permission for a development that would cause harm to the AGLV, the Claimant's claim is likely to be properly characterised as merely a disagreement with the assessments made in applying the policy to the application."

21. He observed that there was "no inconsistency between saved Policy 14 and new Policy 23 or any other element of the development plan". Policy 14, he said, "does not in terms prohibit all development in an AGLV: it prohibits only development which would be harmful" (paragraph 26). He went on to say that "[an] application which, under the development plan (including saved policies) would not be permitted is not a planning application according with the policies in the plan", and that the "other policies to which [counsel] made reference could only go to weight in relation to an application which, under the [development plan] might be permitted" (paragraph 27). He concluded (in paragraph 28):

> "28. … [The] development plan read as a whole, including saved Policy 14, does not permit a development that would cause harm to the landscape, features and characteristics of an AGLV covered by that policy. It follows that a determination granting planning permission for such a development would be a determination not in accordance with the development plan."

22. The judge also concluded that the officer's report "should have made it plain to the [committee] that the development plan, in … Policy 14 required this application to be refused, but that it could be granted if the [committee] were satisfied that material considerations indicated that result" (paragraph 30). The considerations identified as weighing in favour of the proposal were only those that would apply if it was "covered by the general policies relating to developments in the countryside, in particular Policy 23, without consideration of the special requirements in relation to an AGLV" (paragraph 31). The "reasons for the decision under challenge have to be regarded as essentially those in the [officer's report], because the officer's recommendation was accepted by the [committee]". The members "did not appreciate that they were making a decision which did not accord with the development plan, and did not identify or assess any relevant material considerations for departing from the development plan" (paragraph 33).

The Policy 14 issues

23. When he refused the council's application for permission to appeal, the judge said the fact that "there are other parts of the plan that would permit or encourage the development if the site did not have this level of protection is irrelevant to the conclusion that because of the level of protection of AGLVs, this development was not in accordance with the plan and so had to be considered in such terms rather than as a development that accorded with the plan". The council's decision, he said, "was infected by the error of not appreciating the special level of protection given to AGLVs and the fact that departure from the plan was proposed".

24. For the council, Mr James Findlay Q.C. submitted that those observations encapsulated the judge's error. His approach was "unduly strict" and "over-legalistic". What he had to consider was whether the council had correctly understood the relevant policies of the development plan and applied those policies lawfully in considering whether the proposal accorded with the plan as a whole. The council did that.

25. Mr Findlay submitted that if the judge's approach were right, there would be a real risk of departures from the development plan, which have to be dealt with under the procedure in regulation 15 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, being needlessly generated by minimal conflicts with individual policies – in this case, a proposed development involving only limited harm to an Area of Great Landscape Value but finding support in other provisions of the plan, so that it could properly be said to accord with the plan as a whole.

26. At the heart of Mr Findlay's argument was the submission that it was not for the judge to form a view on the extent and significance of the breach of Policy 14, as if this were a matter of his own planning judgment and not the council's as decision-maker. The council did not misunderstand the policy, or misapply it. That the officer accepted there was a breach of it is evident in her report. But as she made plain (in paragraph 11), she concluded that approving the proposal would be a decision taken in accordance with the development plan "as a whole", notwithstanding the conflict with Policy 14. She was clearly aware of the need for planning judgment to be exercised on that question if the council was to perform its duty under section 70(2) of the Town and Country Planning Act 1990 to "have regard to … the provisions of the development plan, so far as material to the application" and "other material considerations", and its duty under section 38(6) of the Planning and Compulsory Purchase Act 2004 to make the determination "in accordance with the plan unless material considerations indicate otherwise". Mr Findlay reminded us of the principles that emerge from the relevant authorities (see *BDW Trading Ltd. v Secretary of State for Communities and Local Government* [2016] EWCA Civ 493; [2017] P.T.S.R. 1337, at paragraphs 18 to 23; *Gladman Developments Ltd. v Canterbury City Council* [2019] EWCA Civ 669; [2019] P.T.S.R. 1714, at paragraphs 21 and 22; and *Chichester District Council v Secretary of State for Housing, Communities and Local Government* [2019] EWCA Civ 1640; [2020] 1 P. & C.R. 9, at paragraphs 31 and 32).

27. Of the five points I mentioned in *BDW Trading Ltd.* (at paragraph 21), three seem particularly relevant here: that "the decision-maker must understand the relevant provisions of the plan, recognizing that they may sometimes pull in different directions"; that "section 38(6) does not prescribe the way in which the decision-maker is to go about discharging the duty"; but that "the duty can only be properly performed if the decision-maker, in the course of making the decision, establishes whether or not the proposal accords with the development plan as a whole".

28. In *R. v Rochdale Metropolitan Borough Council, ex parte Milne* [2000] EWHC 650 (Admin) – which seems not to have been referred to in argument before the judge – Sullivan J., as he then was, said (in paragraph 48):

> "48. It is not at all unusual for development plan policies to pull in different directions. A proposed development may be in accord with development plan policies which, for example, encourage development for employment purposes, and yet be contrary to policies which seek to protect open countryside. In such cases there may be no clear cut answer to the question: "is this proposal in accordance with the plan?" The local planning authority has to make a judgment bearing in mind such factors as the importance of the policies which are complied with or infringed, and the extent of compliance or breach. …".

He then referred to the observations to that effect made by Lord Clyde in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447 (at p.1459D-F):

> "… [The decision-maker] will … have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether in the light of the whole plan the proposal does or does not accord with it. …".

Sullivan J. went on to say (in paragraphs 49 to 51):

> "49. In the light of that decision I regard as untenable the proposition that if there is a breach of any one policy in a development plan a proposed development cannot be said to be "in accordance with the plan". Given the numerous conflicting interests that development plans seek to reconcile: the needs for more housing, more employment, more leisure and recreational facilities, for improved transport facilities, the protection of listed buildings and attractive landscapes etc., it would be difficult to find any project of any significance that was wholly in accord with every relevant policy in the development plan. Numerous applications would have to be referred to the Secretary of State as departures from the development plan because one or a few minor policies were infringed, even though the proposal was in accordance with the overall thrust of development plan policies.
>
> 50. For the purposes of section 54A it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein.
>
> 51. … I accept that the terms of the policy – how firmly it favours or sets its face against … the proposed development [–] is a relevant factor, so too are the relative importance of the policy to the overall objectives of the development plan and the extent of the breach. These are essentially matters for the judgement of the local planning authority. A legalistic approach to the interpretation of development plan policies is to be avoided … ."

29. Those general propositions were acknowledged by Lord Hope of Craighead in *Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13; [2012] 2 P. & C.R. 9 (at paragraph 34). And Lord Reed observed in his judgment in that case (at paragraph 19):

> "19. That is not to say that such statements [of policy] should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse: *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 780, per Lord Hoffmann. Nevertheless,

> planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean."

30. Also relevant here is the decision of this court in *R. (on the application of TW Logistics Ltd.) v Tendring District Council* [2013] EWCA Civ 9; [2013] 2 P. & C.R. 9, where Lewison L.J., having referred to that "important point about development plans" in the judgment of Lord Reed in *Tesco v Dundee City Council*, said this (at paragraph 18):

> "18. This point has two consequences that are relevant to our case. First, we must not adopt a strained interpretation of the Local Plan in order to produce complete harmony between its constituent parts. Second, we must be wary of a suggested objective interpretation of one part of the Local Plan as having precedence over another. In a case in which different parts of the Local Plan point in different directions, it is for the planning authority to decide which policy should be given greater weight in relation to the particular decision. …".

31. Mr Ashley Bowes, for Mr Corbett, made three main submissions, which he sought to base on the judgments in this court in *Canterbury City Council* (in particular, paragraphs 21, 22, 31 and 40 of my judgment, and paragraph 62 of the judgment of the Master of the Rolls): first, the court's function in interpreting planning policy is not limited to construing the words of the relevant policies, but involves ascertaining the policies' "true effect in combination"; secondly, where a proposal is "clearly and unambiguously" in conflict with the development plan, the court can intervene; and thirdly, while the breach of a single policy does not necessarily amount to a failure to accord with the development plan as a whole, there are circumstances in which this may be so.

32. Mr Bowes said there is a question of policy interpretation here, which is whether – as he maintained – saved Policy 14 of the Restormel Local Plan overrode Policy 5 of the Cornwall Local Plan. As the judge had observed (in paragraph 26 of his judgment), the relevant policies of the development plan were not inconsistent with each other – which would have offended regulation 8(4) and (5) of the Town and Country Planning (Local Planning) (England) Regulations 2012. Taken together, Mr Bowes submitted, those policies were "clearly and unambiguously" against the proposal – because of the acknowledged breach of Policy 14. That policy had been deliberately saved by the Secretary of State. And it is in unequivocal terms: proposed development "will not be permitted" if it "would cause harm to the landscape, features and characteristics" of an Area of Great Landscape Value. The officer concluded that there would be such harm. In those circumstances, as the judge recognized, Policy 14 had to be seen as a policy whose effect, "by necessary implication", was to override – or at least to limit or qualify – Policy 5. The officer failed to see this. Her conclusion that the proposal was in accordance with the development plan as a whole betrayed a misinterpretation of policy. That was an error of law.

33. Mr Bowes also submitted that the judge was right to find the officer's reasoning inadequate. In the sense referred to in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314; [2019] P.T.S.R. 1452 (at paragraph 42), the advice she gave the members was materially misleading, because she failed to draw to their attention the fact that the application before them was not in accordance with the development plan.

34. I cannot accept Mr Bowes' submissions. The answer to them, in my view, lies in a straightforward application of the principles in the authorities to which I have referred.

Those principles require no further elaboration here. The approach they suggest is familiar. If one follows that approach, the correct interpretation of the relevant policies in this case does not, in my opinion, yield the understanding of Policy 14, and its relationship to the other policies, for which Mr Bowes contended. On the contrary, I consider the understanding for which the council contends to be both realistic and, as a matter of law, correct.

35. The recent decisions of this court in *Canterbury City Council* and *Chichester District Council* demonstrate the need for care in construing the particular provisions of the development plan in question (see my judgment in *Chichester District Council*, at paragraph 32). In *Canterbury City Council*, as in the first instance decision in *Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin), the suite of policies for housing development, on their true interpretation, formed a complete strategy and, as a matter of "natural and necessary inference", left no scope for proposals lacking explicit support in that strategy. By contrast, in *Chichester District Council*, the provisions of the local plan required no such inference, because the policies of central relevance to the proposed housing development were explicit. As always, the interpretation of the relevant policies depended on a sensible reading of the language used in them, in their context, and together (see paragraphs 47 to 49 of my judgment).

36. Like *Chichester District Council*, this is not a case where the interpretation of the relevant policies requires any inference to be drawn of the kind that was necessary in *Canterbury City Council*. The policies provide in their own terms a readily intelligible basis for deciding whether a proposal such as Mr Tavener's accords with the development plan as a whole. Each policy is clearly expressed. But they must be read together, not in isolation.

37. Mr Tavener's proposal found support in a policy directly relevant to such development. But it was also in conflict, to some degree, with policies for the protection of Areas of Great Landscape Value.

38. Policy 5 of the Cornwall Local Plan was the policy deliberately included in the development plan to support "new, high quality sustainable tourism facilities, attractions and accommodation", subject to their being "of an appropriate scale …", their "accessibility by a range of transport modes", and their "benefits". That support is not subject to any proviso, stated either in the policy itself or in its supporting text, as to the effects a particular development might have on an area of protected landscape – including Areas of Great Landscape Value. Policy 5 does not refer to the policies aimed at the protection of those areas – Policy 23 of the Cornwall Local Plan itself and saved Policy 14 of the Restormel Local Plan.

39. Those policies were of course relevant to Mr Tavener's proposal, because the application site was in an Area of Great Landscape Value. But neither of them rules out development of any particular type in such areas. Neither precludes new "tourism facilities … and accommodation". Both seek to protect Areas of Great Landscape Value, and other designated areas, from unsuitable development. Policy 23 is in positive language. It does not speak of "harm". It says what proposals for development in an Area of Great Landscape Value "should" do – that they "should maintain the character and distinctive landscape qualities of such areas". Policy 14 is in negative terms. It says simply that "[developments] will not be permitted that would cause harm to the landscape, features and characteristics of

Areas of Great Landscape Value". The purpose of the policy, stated in paragraph 5.25 of the supporting text, is to "protect" those areas from "inappropriate development".

40. I acknowledge that the language of Policy 14 is unqualified. A word such as "normally" or "generally" was not inserted to soften the expression "will not be permitted". Nor is the policy qualified by any reference to the nature or degree of harm likely to be caused. And it says nothing about development expressly supported in other policies of the plan. None of this means, however, that the policy is intended to operate to the exclusion of those policies, such as Policy 5 of the Cornwall Local Plan, in which the benefits of particular forms of development are emphasized, or that it renders those other policies irrelevant to the question of whether a particular proposal accords with the development plan as a whole. Policy 14 does not purport to limit the operation of any other policy of the plan. It does not "implicitly" limit or qualify Policy 5, as Mr Bowes submitted.

41. When the relevant policies of the plan are read together, as they must be, I do not think it can be said that Policy 14 has automatic primacy among them, so that any breach of that policy, however slight, will always be conclusive when the decision-maker is considering whether a particular proposal is in accordance with the plan as a whole. That understanding of Policy 14 would not only be an unrealistic and unnecessary constraint on the decision-maker's performance of the section 38(6) duty; it is also incorrect as a matter of construction. None of the policies, including Policy 14, is framed in terms that give it dominance over the others. No order of priority, setting one policy higher than another, or implying that one overrides or displaces any other, is indicated either in the policies themselves or in the accompanying text. Nowhere is it stated, or implied, that any conflict with Policy 14 will necessarily lead to a proposal being found to be not in accordance with the development plan as a whole, or to a refusal of planning permission. And in my view there can be no justification for reading words into Policy 14 that are not there, effectively excluding from the matrix of development plan policy relevant to proposals for "tourism facilities … and accommodation" the very policy that specifically relates to development of this kind – Policy 5; denying that policy its proper place in the performance by the council of its duty under section 38(6); and nullifying the support that such proposals are given by the plan.

42. I am not saying that, as a matter of principle, the breach of a single policy of a development plan can never be capable of amounting to conflict with the plan as a whole. I would not go that far. But that general question is not the issue here. We need only decide whether, on their correct interpretation, the policies with which we are concerned had such an effect, so that any conflict at all with Policy 14 and Policy 23 would inevitably deprive a proposal of the statutory "presumption in favour of the development plan" – as Lord Hope described it in *City of Edinburgh Council* (at p.1449H). I do not think they did.

43. In my opinion this is a case in which, on their correct interpretation, the relevant policies of the development plan were – as Lewison L.J. put it in *TW Logistics Ltd.* (at paragraph 18) – "[pointing] in different directions". Policy 5, supportive of new "tourism … accommodation" being developed in Cornwall, worked in favour of the proposal. Policy 23 and saved Policy 14, unfavourable to development that would harm the Area of Great Landscape Value, worked against it. It was for the council as local planning authority, responsible for the day-to-day application of development plan policy, to "decide which policy should be given greater weight [in this] particular decision".

44. The officer's assessment in her report sits well with that analysis. She did not misinterpret any of the relevant policies, including Policy 14, or fail to grasp how those policies interact with each other. Nor did she fall into error when applying them to the development proposed.

45. How was the committee to resolve the tension between policy support for the proposal and policy conflict when deciding whether it was in accordance with the development plan as a whole? The answer is not that, as a matter of "necessary inference", Policy 14 on its own, or together with Policy 23, dictated the outcome. Under section 38(6) the members' task was not to decide whether, on an individual assessment of the proposal's compliance with the relevant policies, it could be said to accord with each and every one of them. They had to establish whether the proposal was in accordance with the development plan as a whole. Once the relevant policies were correctly understood, which in my view they were, this was classically a matter of planning judgment for the council as planning decision-maker.

46. The main factors in that exercise of planning judgment were, on one side, the benefit of the proposal in furthering the aims of Policy 5 and, on the other, the extent and significance of the breach of Policy 14 and Policy 23. In her assessment the officer weighed those factors against each other, in conclusions that are not in themselves criticized by Mr Bowes. She concluded that the proposed development "would support economic growth and safeguard/create jobs in this rural area", and "would therefore comply with paragraph 28 of the NPPF and policy 5 of the CLP" (paragraph 35 of the report). Having reminded the committee of the words of Policy 23 and Policy 14 (in paragraphs 40 to 43), she concluded that "the overall impact upon the Area of Great Landscape Value would be slight/moderate at a localised level which would weigh against the proposal" (paragraph 58). The balance between those factors is clearly struck in her decisive conclusion that "considering the proposal in accordance with the development plan and [the NPPF] as a whole", she would give, "limited weight to the impact upon the AGLV as the views are localised and can be further mitigated by suitable planting and … greater weight to the economic benefits of the proposal" (paragraph 11) – a conclusion amplified by the recognition that it "… would result in a satisfactory development which would add to sustainable economic growth in rural areas and assist the local tourist industry" (paragraph 12). Put simply, therefore, the proposal's compliance with Policy 5 prevailed over its conflict with Policy 14 and Policy 23, and, in the absence of conflict with any other policy, a decision to approve it was a determination made "in accordance with the development plan".

47. Neither that exercise of planning judgment under section 38(6) of the 2004 Act nor any of the ingredient planning judgments made in the course of the officer's assessment of the proposal on its merits was irrational, or vulnerable in any other way to criticism in a public law challenge.

The officer's reasoning

48. The parties agreed that the second of the three main issues in the appeal – whether the officer's reasoning towards her conclusion that the proposal should be approved was inadequate – falls away if the first issue is decided in the council's favour. But in any event I would reject the complaint that the officer's reasons fell short of what was required.

49. When the adequacy of a planning officer's report to committee is called into question, the court does not expect to find a flawless discussion of every planning issue. The principles are well known (see *Mansell*, at paragraph 42 in my judgment and paragraph 63 in the judgment of the Chancellor of the High Court). The court must ask itself whether the officer's advice is "significantly or seriously misleading – misleading in a material way", such as "where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law". Only if there is "some distinct and material defect" in that advice will the court intervene (paragraph 42(3)).

50. Applying that test to the officer's report in this case, I cannot see how it could be regarded as defective. The officer did not mislead the members. She identified the relevant policies of the development plan, evidently understood those policies correctly, applied them lawfully, addressed the other material considerations, including relevant policy in the NPPF, and guided the committee appropriately in discharging their duties under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act. The assessment and advice in her report are legally sound.

51. I therefore disagree with the analysis that led the judge to quash the council's grant of planning permission. In my view, he was wrong to hold that the proposal's conflict with Policy 14 prevented the council from concluding, on the officer's advice, that a decision to approve it was in accordance with the development plan. He was also wrong to hold that in this respect the reasoning in the officer's report was at fault.

The Policy 7 issue

52. The judge did not find it necessary to come to a concluded view on the question of whether development of the type proposed by Mr Tavener should be regarded as the provision of "housing" within Policy 7 of the Cornwall Local Plan (paragraph 34 of the judgment).

53. On the respondent's notice, Mr Bowes submitted that as well as misunderstanding Policy 14 and Policy 23, the council misconstrued Policy 7 and failed to take into account the breach of that policy, which also made it impossible to conclude that the proposal was in accordance with the development plan. The council did not identify, in full, the relevant provisions of the development plan, and have regard to them all – as section 70(2) of the 1990 Act and section 38(6) of the 2004 Act required (see the speech of Lord Clyde in *City of Edinburgh Council*, at p.1459D-E). It did not "understand the nature and extent of the departure from the plan", and "consider on a proper basis whether such a departure [was] justified by other material considerations" (see the judgment of Lord Reed in *Tesco v Dundee City Council*, at paragraph 22).

54. Apart from the defined exceptions, none of which applied here, Policy 7 prevents the development of "housing", "new homes" or "dwellings" in the countryside, including – said Mr Bowes – changes of use to residential use. Even if read as applying only to development within Class C3 of the Town and Country Planning (Use Classes) Order 1987, it is wide enough to embrace the provision of holiday accommodation in the form of caravans and holiday lodges in seasonal use, and would thus include accommodation whose occupancy was restricted by a condition of the kind imposed by the council in this case (see *Gravesham Borough Council v Secretary of State for the Environment* (1984) 47 P. & C.R. 142). Mr

Bowes submitted, therefore, that the officer's reference simply to "market housing" in paragraph 27 of her report reveals too narrow an understanding of the policy, and that this error was not overcome by a condition preventing the development being used as "permanent residential accommodation".

55. Mr Bowes relied on the proposition, accepted by the Court of Appeal (Criminal Division) in *R. v Akhtar and Akhtar* [2015] EWCA Crim 1430; 2015 WL 4938237 (at paragraph 34), that "[both] permanent residences and short-term holiday homes fall within Class C3". He also referred to the decision of this court in *Moore v Secretary of State for Communities and Local Government* [2012] EWCA Civ 1202; 2012 WL 4050191, where Sullivan L.J. said (at paragraph 27) that "whether the use of a dwellinghouse for commercial letting as holiday accommodation amounts to a material change of use will be a question of fact and degree in each case, and the answer will depend upon the particular characteristics of the use as holiday accommodation". On the facts in that case, as Sullivan L.J. said (at paragraph 36), the "particular use for holiday lettings [was] very far removed from the permitted use as a dwellinghouse and a material change of use has occurred". Mr Bowes submitted, however, that the description of the proposed "comfortable peaceful accommodation for families and couples" given by Mr Tavener in paragraph 10 of his witness statement of 9 November 2018 would fall within the broad concept of a dwelling-house, which is enough to engage Policy 7. In the Lower Sticker enforcement appeal, to which the parish council referred in its objection, the inspector had accepted (in paragraph 9 of his decision letter) that "[a] caravan used for holiday purposes falls within use class C3 and therefore … Policy 7 of the recently adopted [Cornwall Local Plan] is relevant". The same was so here.

56. I do not accept that argument. Once again one must remember that the development plan has to be read sensibly as a whole. Policy 5 and Policy 7 have quite different objectives. However, as Mr Findlay submitted, on the construction of Policy 7 urged upon us by Mr Bowes, it is hard to conceive of any "tourism … accommodation" in the countryside of the kind supported by Policy 5 that would escape the restriction in Policy 7, though the latter says nothing about such development. This seems an unjustified reading of the two policies. And in my view it is incorrect. The policies may not be mutually exclusive in the forms of accommodation to which they potentially apply. But they can be read, and should be, without introducing unintended contradiction. And I think that in this case the council's committee, in the light of the officer's advice, was entitled to deal with Mr Tavener's proposal as "tourism … accommodation" of the kind that earns the support of Policy 5, and not also within the reach of Policy 7.

57. Mr Bowes did not contend that the proposed development lay outside the scope of Policy 5 – and, in particular, the provision expressing support for "new, high quality sustainable tourism … accommodation" so long as it satisfies the requirements relating to "scale", "accessibility" and "benefits". That would not have been a realistic submission. The proposal, as described by the officer under the heading "Principle of Development" in paragraphs 27 to 36 of her report, undoubtedly fell within Policy 5, and was supported by it.

58. Was the officer wrong to conclude that the proposal did not have to be considered under Policy 7 in addition to Policy 5? In my view, at least in the circumstances of this case, she was not. This much is clear from what she said when dealing with the "Principle of Development" in paragraph 27 of her report, where she noted that the "application site is located within the countryside where open market housing would not be supported by

policy". She can only have been referring there to the restriction on such development in Policy 7. Mr Bowes did not suggest otherwise.

59. I do not think the officer misinterpreted Policy 7. She made it plain that she was conscious of the restriction it contains on the development of "housing" in the countryside. She did not suggest that any of the exceptions might apply here. Nor did she suggest that the concept of "new homes" or "dwellings" in the policy was to be taken more narrowly than "[use] as a dwellinghouse (whether or not as a sole or main residence)", within Class C3 of the Use Classes Order. Her understanding of the policy was not at odds with the broad conception of such use in the relevant authorities. She did not advise the members that the development of "holiday accommodation" could never, in any circumstances, be regarded as "housing" within the ambit of the policy.

60. She did, however, confront the crucial question, which was whether in the particular circumstances of this case, where the proposed development was an extension to an existing holiday park and met the relevant criteria in Policy 5, and despite the condition she recommended to control the occupancy of the proposed "holiday accommodation", the proposal ought nevertheless to be regarded as one to which Policy 7 should be applied.

61. She was aware of what the inspector had said in his decision letter on the Lower Sticker appeal. Not only had that decision had been referred to in the parish council's objection, which she quoted in her report; it had also been discussed in correspondence between her and Mr Corbett in December 2017. In her email to Mr Corbett dated 4 December 2017, she contrasted the development at Lower Sticker with that proposed by Mr Tavener. On the facts there, as she pointed out, the inspector had concluded that the development against which the council had enforced, which was not an extension of an existing tourism facility, found no support in Policy 5, but ought to be assessed against Policy 7 as "housing in the countryside". The inspector said (in paragraph 11 of his decision letter):

> "11. LP Policy 5 supports the development of new tourism facilities through the provision of new, high quality sustainable accommodation which is of an appropriate scale to its location and is accessible by a range of transport nodes. As the site is not within a settlement that provides for the day-to-day facilities the development does not accord with LP Policy 5 and paragraphs 28 and 55 of [the NPPF]. No analysis of the contribution the development makes to the local economy or how it augments local tourist needs have been submitted, other than the appellants stating that caravan lettings support their income and that the caravans provide a special low-key type of holiday."

62. Mr Tavener's proposal for the extension of the Sun Valley Holiday Park was significantly different. As the officer went on to say in her email, it "would expand the holiday park". She quoted the relevant provision in Policy 5 supporting the "… the enhancement of existing or provision of new, high quality sustainable tourism facilities …". And she confirmed that Mr Tavener's proposal would be assessed against the considerations in that policy.

63. When she prepared her report for the committee meeting in February 2018, that is what she did. Applying Policy 5, she was satisfied that in this case the proposal was squarely within the policy, complied with it, and would bring about benefits of the kind it sought, contributing to the local economy and meeting a local need for tourism facilities. Her

description of it (in paragraph 35 of the report) as an "expansion of an existing sustainable tourism facility, which contains existing facilities for patrons of [the Sun Valley Holiday Park] in an appropriate location where existing needs are not being met" is not criticized. Nor is her conclusion (in the same paragraph), that the development "would support economic growth and safeguard/create jobs in this rural area", and so "comply with paragraph 28 of the NPPF and policy 5 of the CLP".

64. These were matters of planning judgment, which, in my view, the officer, and the members, exercised lawfully. As the officer made clear, her conclusions assumed a condition restricting the use of the proposed "holiday units" to their use as such, thus ensuring they would remain within Policy 5 (paragraph 27 of the report). The condition stipulates that the pitches are to be "used as holiday accommodation only and shall not be occupied as a person's sole or main place of residence". And the reason for its imposition – "[to] accord with development plan housing policies under which permanent residential accommodation would not normally be permitted on the site and the accommodation … is unsuitable for continuous occupation and in accordance with the aims and intentions of paragraphs 28 and 55 of [the NPPF]" – shows the council's intent that the development will remain, as proposed, "tourism … accommodation" within Policy 5, and not become "[housing] in the countryside" contrary to Policy 7.

Conclusion

65. Finally, I think it is worth recalling what Baroness Hale of Richmond said about decision-making by local planning authorities in *R. (on the application of Morge) v Hampshire County Council* [2011] UKSC 2; [2011] 1 W.L.R. 268 (at paragraph 36): that "in this country planning decisions are taken by democratically elected councillors, responsible to, and sensitive to the concerns of, their local communities", who "go about their decision-making in a different way from courts", aided by "professional advisers who investigate and report to them", and it is "their job, and not the court's, to weigh the competing public and private interests involved".

66. I think it can fairly be said that, in undertaking that role, the professional officers of a local planning authority, and members who sit regularly on a planning committee, will not often be shown to have misinterpreted the policies of its development plan. This is not to cast any doubt on the basic principle that the interpretation of planning policy is ultimately a matter of law for the court, not the policy-making authority, nor is it to overlook Lord Reed's warning in *Tesco v Dundee City Council* (at paragraph 19) that local planning authorities "cannot make the development plan mean whatever they would like it to mean" – though he did not suggest it was likely that many authorities would think they could. When planning decisions are made, the policies of the local plan must always be properly understood and lawfully applied. Errors of law will sometimes be made, and the court will act when they are.

67. In this case, in my view, no such error occurred. The council did not misconceive the relevant policies of its plan, and did not apply them unlawfully. Its decision was clearly explained in the officer's report. The grant of planning permission should not have been quashed.

68. For the reasons I have given, I would allow the appeal.

Lord Justice Leggatt

69. I agree.

Lord Justice Lewison

70. I also agree.

R. (on the application of Corbett) v Cornwall Council **[2020] EWCA Civ 508; [2020] J.P.L. 1277**

1. This case concerned when a proposal will be “in accordance with the development plan” despite being in conflict with individual policies.

2. The Council granted planning permission for a development which it found to be in conflict with development plan policies for the protection of Areas of Great Landscape Value but compliant with other relevant policies, including a policy encouraging development for tourism, and thus in accordance with the plan as a whole.

3. The Council’s decision was challenged. At first instance, the Judge held that the Council’s decision to grant planning permission was a determination not in accordance with the development plan because a local plan policy relating to the effect of development on Areas of Great Landscape Value prevented permission being granted. The Council appealed to the Court of Appeal.

4. The Court of Appeal allowed the appeal and gave guidance as to how the s. 38(6) duty should be discharged where the relevant policies in the development plan pull in different directions. The relevant paragraphs are as follows:

> “54. Apart from the defined exceptions, none of which applied here, Policy 7 prevents the development of "housing", "new homes" or "dwellings" in the countryside, including – said Mr Bowes – changes of use to residential use. Even if read as applying only to development within Class C3 of the Town and Country Planning (Use Classes) Order 1987 , it is wide enough to embrace the provision of holiday accommodation in the form of caravans and holiday lodges in seasonal use, and would thus include accommodation whose occupancy was restricted by a condition of the kind imposed by the council in this case (see *Gravesham Borough Council v Secretary of State for the Environment (1984) 47 P. & C.R. 142*). Mr Bowes submitted, therefore, that the officer's reference simply to "market housing" in paragraph 27 of her report reveals too narrow an understanding of the policy, and that this error was not overcome by a condition preventing the development being used as "permanent residential accommodation".

55. Mr Bowes relied on the proposition, accepted by the Court of Appeal (Criminal Division) in *R. v Akhtar and Akhtar [2015] EWCA Crim 1430; 2015 WL 4938237* (at paragraph 34), that "[both] permanent residences and short-term holiday homes fall within Class C3". He also referred to the decision of this court in *Moore v Secretary of State for Communities and Local Government [2012] EWCA Civ 1202; 2012 WL 4050191* , where Sullivan L.J. said (at paragraph 27) that "whether the use of a dwelling house for commercial letting as holiday accommodation amounts to a material change of use will be a question of fact and degree in each case, and the answer will depend upon the particular characteristics of the use as holiday accommodation". On the facts in that case, as Sullivan L.J. said (at paragraph 36), the "particular use for holiday lettings [was] very far removed from the permitted use as a dwelling house and a material change of use has occurred". Mr Bowes submitted, however, that the description of the proposed "comfortable peaceful accommodation for families and couples" given by Mr Tavener in paragraph 10 of his witness statement of 9 November 2018 would fall within the broad concept of a dwelling-house, which is enough to engage Policy 7. In the Lower Sticker enforcement appeal, to which the parish council referred in its objection, the inspector had accepted (in paragraph 9 of his decision letter) that "[a] caravan used for holiday purposes falls within use class C3 and therefore … Policy 7 of the recently adopted [Cornwall Local Plan] is relevant". The same was so here.

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57. Mr Bowes did not contend that the proposed development lay outside the scope of Policy 5 – and, in particular, the provision expressing support for "new, high quality sustainable tourism … accommodation" so long as it satisfies the requirements relating to "scale", "accessibility" and "benefits". That would not have been a realistic submission. The proposal, as described by the officer under the

heading "Principle of Development" in paragraphs 27 to 36 of her report, undoubtedly fell within Policy 5, and was supported by it.

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63. When she prepared her report for the committee meeting in February 2018, that is what she did. Applying Policy 5, she was satisfied that in this case the proposal was squarely within the policy, complied with it, and would bring about benefits of the kind it sought, contributing to the local economy and meeting a local need for tourism facilities. Her description of it (in paragraph 35 of the report) as an "expansion of an existing sustainable tourism facility, which contains existing facilities for patrons of [the Sun Valley Holiday Park] in an appropriate location where existing needs are not being met" is not criticized. Nor is her conclusion (in the same paragraph), that the development "would support economic growth and safeguard/create jobs in this rural area", and so "comply with paragraph 28 of the NPPF and policy 5 of the CLP".

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