Neutral Citation Number: [2014] EWCA Civ 567

Case Nos: C1/2013/2619, 2622, 3551 and 3781

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday 7th May 2014

Before :

LORD JUSTICE RICHARDS
LORD JUSTICE UNDERHILL
and
LORD JUSTICE FLOYD

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

Between :

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

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

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

Hearing dates : 11-12 March 2014

Judgment

As Approved by the Court

Lord Justice Richards :

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

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

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

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

Development plan policy

The relevant policy

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

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

"**GOLF COURSES**

12.70 There are seven established golf courses in the District concentrated principally around Dorking and Leatherhead. In the Newdigate area a new course has been opened in recent years and another permitted. More generally this part of Surrey is very well served with golf courses. According to the recognised standards of provision there is no overriding need to accommodate further golf courses in the District.

12.71 In considering proposals for new courses, the protection of the District's Green Belt and countryside will be of paramount importance. In this regard it will be important to ensure that a proposal is compatible with retaining and where possible enhancing the openness of the Green Belt and rural character of the countryside. Applicants proposing new courses will be required to demonstrate that there is a need for further facilities.

12.72 New courses are likely to have an impact on the District's landscape because of their extensive size, formal appearance, considerable earth works and new buildings. The Council will seek to ensure that proposals for golf courses do not reduce the distinctiveness and diversity of the District's landscape. The Council is particularly concerned about the effect on the special landscape qualities of the Surrey Hills Area of Outstanding Natural Beauty and the Area of Great Landscape Value and future golf course proposals will be directed away from these areas of high landscape quality.

POLICY REC12 – DEVELOPMENT OF GOLF COURSES

Proposals for new golf courses and extensions to existing courses will be considered against the following criteria:

1. the impact of the course on the landscape, archaeological remains and historic gardens, sites which are important for nature conservation and identified in Policies ENV9, ENV10, ENV11, ENV12 and ENV13, and the extent to which the proposal makes a positive contribution to these interests;

2. the extent of any built development and facilities and their impact on the character and appearance of

the countryside;

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

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

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

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

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

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

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

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

Whether there was a requirement to demonstrate need

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The meaning of "need"

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

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

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

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

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

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

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

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

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

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

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

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

Whether the Council's conclusion on need was rational

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

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

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

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

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

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

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

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

The issue of "directing away"

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

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

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

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

Landscape impact

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

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

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

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

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

Whether paragraph 116 of the NPPF applied

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

> "115. Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty ….
>
> 116. Planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated that they are in the public interest. Consideration of such applications should include an assessment of:
>
> - the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
>
> - the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and
>
> - any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated."

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

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

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

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

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

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

Whether the conclusion in relation to landscape character was rational

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

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

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

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

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

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

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

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

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

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

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

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

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

Consistency with the aim of conserving and enhancing the landscape

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

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

Green Belt policy

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

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

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

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

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

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

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

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

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

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

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

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

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

The concluding paragraph of the reasons is also relevant:

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

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

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

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

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

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

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

Reasons

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

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

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

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

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

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

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

The costs appeals

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

Overall conclusion

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

Lord Justice Underhill :

74. I agree.

Lord Justice Floyd :

75. I also agree.