Neutral Citation Number: [2020] EWHC 1895 (Admin)

Case No: CO/202/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/07/2020

Before :

THE HON. MR JUSTICE HOLGATE

- -

Between :

R (Patricia Shave)	**Claimant**
- and -	
Maidstone Borough Council	**Defendant**
- and -	
Mr and Mrs P Body	**Interested Parties**

- -
- -

Ms. Kate Olley (instructed by **Kingsley Smith Solicitors LLP**) for the **Claimant**
Mr. Giles Atkinson (instructed by **Mid Kent Legal Services**) for the **Defendant**
The **Interested Parties** did not appear and were not represented

Hearing date: 07 July 2020

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, released to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 09:30 on the 15th July 2020

Mr Justice Holgate :

Introduction

1. On 13 December 2019 the Defendant, Maidstone Borough Council ("MBC"), granted planning permission to the Interested Parties, Mr and Mrs Body, for the change of use of land at Oakhurst, Stilebridge Lane, Marden, Kent, TN12 9BA for the stationing of 18 holiday caravans with associated works, including hardstanding and a bin store. The site lies to the east of Stilebridge Lane. The Claimant, Mrs Patricia Shave, is the owner of the dwelling known as Ellmacy, which lies about 40m from the south-western corner of the site.

2. The planning application was received by MBC on 18 January 2019 and included a Design Access and Planning Statement, a site location plan and a block plan. At that stage the application was for a change of use to "20 holiday lodges". The application site comprised some 2.3 hectares of land situated to the south of the dwelling known as Oakhurst. It was laid to grass and divided into two paddocks, with the western paddock in use for the past few years as a site for caravan and camping, providing pitches for touring caravans and tents. The eastern paddock had been used for horse grazing.

3. Paragraph 4.2 of the Design Access and Planning Statement said that:-

> "The actual final layout of the site and design of the facilities will be the subject of a separate application for a Caravan Site licence at a later date to ensure that it meets the relevant requirements in terms of health and safety and other relevant criteria. The purpose of this application is to establish the use of the land for this purpose."

The licence referred to would have to be obtained under the Caravan Sites and Control of Development Act 1960 ("the 1960 Act").

4. Paragraph 4.3 of the Statement said that the "indicative site layout" illustrated how the lodges would be arranged within the site. The proposals also included "an indication of the type of lodges to be provided". They would be clad externally with weatherboarding and a wood stained finish "to help to assimilate them into the surrounding countryside".

5. Paragraph 5.2 of the Statement said that the proposal to use the land for "holiday lodges" would avoid trips to and from the site by traffic towing caravans or trailer tents, as generated by the current use of the land.

6. Paragraph 7.7. of the Statement said that the proposed holiday lodges would fall within the definition of a caravan as set out in the 1960 Act. They would each comprise "a twin unit with[in] [the] maximum dimensions." Paragraphs 7.8 to 7.11 accepted that because the proposal was to provide accommodation for holidays and tourism it would be appropriate for a "holiday occupancy condition" to be imposed on the grant of any permission. Paragraph 7.11 stated that "the approach that is now generally adopted is a condition preventing occupation as a sole/principle (sic) dwelling coupled with a register of lettings. It is therefore considered that permanent residential occupancy could be satisfactory (sic) controlled without a condition requiring a seasonal break in occupation."

7. Paragraphs 7.12 to 7.15 of the Statement addressed the sustainability of the development. Paragraph 7.13 described the public transport facilities available. Paragraph 7.12 explained that proposals of this kind are necessarily located in the open countryside and it was accepted that most visitors would arrive by car. However, there is a public house/restaurant within walking distance and opportunities for fishing in a nearby river and for walking and cycling in the nearby countryside. It would also be possible to walk or cycle to Marden where there is a range of public houses/restaurants.

Meeting of Planning Committee on 30 May 2019

8. The application was considered by MBC's Planning Committee on 30 May 2019. Section 3 of the Officer's Report identified relevant policies in the Maidstone Borough Local Plan (2017), including DM30, DM37 and DM38. Section 4 of the report summarised local representations which had raised objections and concerns regarding the proposal. Marden Parish Council had asked for the application to be refused. But a number of consultees responded that they had no objection to the proposal. They included the highway authority, the Environment Agency, MBC's landscape officer and Natural England.

9. Paragraphs 6.01 to 6.06 dealt with the main issues:-

> "6.01 Local Plan policy SSl seeks to support small scale employment opportunities in appropriate locations to support the rural economy; and policy SP21 sets out that the Council is committed to supporting and improving the economy of the borough and providing for the needs of businesses, by (inter alia): *Supporting proposals for expansion of existing economic development premises in the countryside, including tourism related development, provided scale and impact of development is appropriate for its countryside location, in accordance with policy DM37.*
>
> 6.02 Local Plan policy DM37 also supports the expansion of existing businesses in the rural area provided certain criteria are met; and Local Plan policy DM38 allows for holiday caravan sites in the countryside provided they:
>
> > *i. Would not result in unacceptable loss in amenity of area. In particular, impact on nearby properties and appearance of development from public roads will be of importance; and*
> >
> > *ii. Site would be unobtrusively located and well screened by existing or proposed vegetation and would be landscaped with indigenous species.*
>
> 6.03 The proposal is also subject to the normal constraints of development in the countryside under the Maidstone Local Plan. Local Plan policy SP17 states that new development in the countryside will not be permitted unless it accords with other policies in the Local Plan, and would not result in harm to the character and appearance of the area or in terms of residential

> amenity. Local Plan policy DM30 states (inter alia) that new development should maintain, or where possible, enhance the local distinctiveness of an area; and ensure that associated traffic levels are acceptable.
>
> 6.04 Furthermore, Local Plan policy seeks new development to respect the amenities of occupiers of neighbouring properties; and avoid inappropriate development within areas at risk from flooding (LP policy DM1); and to protect areas of Ancient Woodland from inappropriate development and avoid significant adverse impacts as a result of development. Indeed, policy DM3 relates to how development should protect areas of Ancient Woodland from inappropriate development and to avoid significant adverse impacts as a result of development.
>
> 6.05 Please note that the proposal site could be used for camping (without restriction of numbers) for 28 days in total of any calendar year without requiring planning permission under Class 4, Part B of the GPDO.
>
> 6.06 The key issues for this application are considered to be what impacts the proposal would have upon the character and appearance of the area (including Ancient Woodland impacts); its highway safety and residential amenity impacts; flood risk; and what impact it would have upon the adjacent ancient woodland and biodiversity. Other material planning considerations will then also be addressed."

10. Paragraph 6.07 to 6.11 of the Officer's Report dealt with visual impact:-

> "Within the Maidstone Landscape Capacity Study: Sensitivity Assessment, the proposal site is in the Staplehurst Low Weald landscape character area (44) that is considered to be sensitive to change. This assessment also states that development in this area could support existing rural enterprises, although extensive, large scale or visually intrusive development would be inappropriate.
>
> 6.08 It is accepted that the proposal would change the character of what is an open field. However, the site benefits from a mature, well-established hedgerow to the roadside boundary; the southern boundary also benefits from a well-established hedge and several individual trees; and the eastern (rear) boundary is entirely enclosed by Ancient Woodland. To the north, the site is largely screened by Oakhurst and its associated outbuildings; existing hedgerows; and by more Ancient Woodland and Stilebridge Caravan Park. In general terms, the surrounding road network is also lined with hedges/trees; existing built development provides some screening; and no public footpath comes within 200m of the proposal site. As such, it is considered that views of the proposal would be limited to short range views,

> particularly when passing the site along Stilebridge Lane; and any medium to long distance views of the development from any other public vantage point would be glimpsed.
>
> 6.11 It is therefore considered that the proposal would not appear prominent or visually intrusive in a landscape that is sensitive to change, and would not result in significant harm to the appearance of the landscape and the rural character of the countryside hereabouts."

11. The Claimant is particularly concerned about the effect of the proposal on the residential amenity of the occupants of Ellmacy. This issue was dealt with in the Officer's Report at paragraph 6.16 to 6.17:-

> "6.16 The applicant lives at Oakhurst, the property to the immediate north of the site. The next nearest residential property is Ellmacy. Whilst there is extant planning permission for the erection of an annexe to the north of Ellmacy, the main house is more than 40m from the south-western corner of the site, and the main garden area for this property is to the south of the house, more than 50m away from the proposal site. Beyond this is Stilebridge Barn; the caravans on Stilebridge Lane Caravan Site are some 120m to the north-east of the site; and no other residential property would be within 200m of the site.
>
> 6.17 When considering the intended use of the site and the separation distances from it and any residential property, the noise generated by the proposal (including vehicle movements to and from the site) will be acceptable in residential amenity terms, and the Environmental Protection Team has also raised no objection in terms of noise. It is also considered that most of the vehicle movements to and from the site would be by private motor vehicles only, coming from the A229 to the north-east of the site and not passing the nearest houses to the site. No objection is therefore raised to the proposal in terms of general noise and disturbance, and there is no reason to believe that odours from the site would create an unacceptable living environment for any local resident."

12. Under the heading 'Other Matters' the Officer advised the committee at paragraph 6.27 that "the proposal is not Environmental Impact Assessment development."

13. The overall conclusion of the Officer's Report was set out at paragraph 7.01:-

> "The proposal would not be obtrusive and would not result in an unacceptable loss in the amenity of the area, in terms of its visual impact and its impact upon the living conditions of local residents; and existing landscaping will be retained and the site will enhanced by further native planting. Furthermore, no objection is raised in terms of highway safety; flood risk; biodiversity; and in terms of Ancient Woodland protection. A

> holiday occupancy condition will also be attached to any permission, preventing use of any unit as a permanent encampment. As such, the proposal is acceptable with regard to the relevant provisions of the Development Plan, the NPPF and all other material considerations such as are relevant. A recommendation of approval of this application is therefore made on this basis."

14. At the meeting the members of the committee resolved to defer their consideration of the application so that further information could be sought from the interested parties to enable the assessment of *inter alia* visual impact and the potential level of harm. The information sought included:

> "Details of the actual layout of the site including hard and soft landscaping and any associated facilities and lighting
>
> Details of the scale and design parameters
>
> Further detail in terms of demonstrating both local and longer distance views and how these can be mitigated
>
> More details in terms of landscaping…"

The members of the committee also sought further information on the business model for the proposal and the model for occupation, including whether the lodges would be short-let units managed by the site owners.

Meeting of the Planning Committee on 5 December 2019

15. The Committee received a further Officer's Report. Paragraph 1.02 summarised the additional information submitted by the interested parties, which included an amended site location plan reducing the extent of the proposal to the western paddock and the site area to 1.18 hectares. An amended layout plan showed a reduction in the total number of caravans proposed from 20 to 18 and an extension of new planting along northern and southern boundaries. The applicant also provided a Visual Impact Assessment and a business plan.

16. Paragraph 3.03 of the Officer's Report plainly stated that any development outside the revised redline area of the application site would require planning permission:-

> "The proposed layout would now restrict development to the front of the site, preventing the sprawl of development across the site and retaining a sense of openness at the rear. The level of hardstanding has been restricted to the access road and the caravan bases, with all parking areas being of grasscrete to further soften the appearance of the development. The layout also provides a significant buffer from the proposal to the Ancient Woodland beyond (over 65m). For these reasons, the layout is considered to be acceptable."

17. Paragraphs 3.05 to 3.06 of the Officer's Report confirmed that the proposal was for static caravans not exceeding the parameters in the definition of a caravan set out in s.

29 of the 1960 Act (read with s. 13 of the Caravan Sites Act 1968) and then dealt with "design":-

> "3.05 To reiterate, a caravan under this definition can be up to 20m in length and 6.8m in width; with the overall height being 3.05m. Provided the static caravans meet this definition, planning application is only required for the change of use of the land in this respect, and so it is not justified to request further plans/details of the static caravans.
>
> 3.06 An additional informative will also be imposed reminding the applicant that any additions to the caravans, such as decking and verandas, would take the caravans out of the lawful definition of a caravan, under Section 29 of the Caravan Sites and Control of Development Act 1960, and planning permission would be required for each structure."

18. In relation to visual impact, paragraphs 3.10 to 3.12 of the Officer's Report stated that:-

> "3.10 The now submitted Visual Impact Assessment (VIA) concludes that the proposal would have a minimal impact on the landscape from public vantage points, and this conclusion is accepted. The Landscape Officer is satisfied that the VIA is an appropriate level study for this proposal. Whilst some of the landscape details in the VIA are not up to date, as it is not intended to be a full LVIA and only an assessment of public viewpoints, the Landscape Officer considers it to be an acceptable submission on this basis.
>
> 3.11 In addition, the amended layout further safeguards the visual amenity of the countryside, by keeping the static caravans and associated built works away from the rearmost part of the site, where the land level does rise; by reducing the number of caravans; and by showing a more comprehensive landscaping scheme (as explained above) to further mitigate the visual impact of the development.
>
> 3.12 With everything considered, it remains the view that the proposal would not appear prominent or visually intrusive, and it would not result in significant harm to the appearance of the landscape and the rural character of the countryside hereabouts."

19. Paragraph 3.13 explained that the applicants proposed to sell 5 caravans on site to private owners in order to recoup capital expenditure. They would own and operate the remaining 13 caravans as a "hire fleet".

20. Paragraphs 3.14 to 3.16 of the Officer's Report explained why, as a matter of judgment, the proposal was considered to meet a demand for tourist facilities and was to be treated as a sustainable location for that purpose.

21. The officer's overall conclusion was set out in paragraph 4.01:-

> "It is considered that the proposal's location is appropriate, and its scale (in terms of its reduced site area and number of static caravans), is acceptable." The Officer judged that the proposal would not have an unacceptable impact on the living conditions of local residents and it "would not result in unacceptable loss in amenity of area: and it would be unobtrusively located and well screened by existing and proposed native planting."

The Officer recommended that "a holiday occupancy condition will also be attached to any permission, preventing use of any unit as a permanent encampment."

Ground 1

22. The area of the site is 1.18 ha. Schedule 2 of the Town and Country Planning (Environment Impact Assessment) Regulations 2017 (SI 2017 No. 571) ("the 2017 Regulations") specifies permanent camp sites and caravan sites exceeding 1 ha in area. The proposal therefore fell to be screened to see whether the "development would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location" and thus constitute "EIA development" requiring to be subject to the EIA process (regulation 2(1), 3 and 4). It is common ground that the power to decide this question and to issue a screening opinion was delegated within MBC to officers.

23. On 3 December 2019 duly authorised officers issued a screening opinion that the harm from the proposal "is considered to be localised and… therefore… the development is not so significant or wide ranging as to warrant an ES". Ms. Olley confirmed that the Claimant does not challenge the legality of that opinion or suggest that there has been any breach of the 2017 Regulations. The fact that the negative screening opinion was not issued until 3 December 2019 does not give rise to any error of law.

24. Ms. Olley drew attention to paragraph 6.27 of the officer's report in May 2019, which stated that "the proposal is not Environmental Impact Assessment development." She pointed out that no screening opinion had been issued at that stage, but accepted that that statement in the officer's report did not vitiate MBC's decisions in December 2019 to grant planning permission. The key point is that the requirements of the 2017 Regulations for a lawful screening decision to be made were satisfied by 3 December 2019, before the decision to grant planning permission was taken and the decision notice issued.

25. Ms. Olley pointed to the "urgent update" provided to the Planning Committee for its meeting on 5 December 2019 which stated that a negative screening opinion had been adopted on behalf of MBC. She pointed out that the Council's pre-action protocol response dated 6 January 2020 had incorrectly said that the screening opinion had been put before members, whereas in fact they had been told nothing more than that a negative screening opinion had been issued. But Ms. Olley accepted that there was no legal requirement for the members to be given any details about the screening opinion. This was a delegated decision for officers to take and, as the Claimant accepted, that decision is not open to legal criticism. The error in the letter of 6 January 2020 is unfortunate, but, as Ms. Olley accepts, does not render the grant of permission unlawful. Ultimately, she made, as I understood it, a generalised assertion that there had been a public law error because of the manner in which this aspect had been reported to

members. In my judgment it is impossible to say that the members were misled in any relevant, let alone any significant way which could possibly have affected their determination of the application for planning permission, applying the principles set out in [28] below

26. Ground 1 must be rejected.

Ground 2

27. The Claimant submits that the grant of permission should be quashed because the officer's reports to committee were significantly misleading in a number of respects.

28. The relevant legal principles were summarised in the judgment of Lindblom LJ in R (Mansell) v Tonbridge & Malling Borough Council [2019] PTSR 1452 at [42]:-

> "The principles on which the court will act when criticism is made of a planning officer's report to committee are well settled. To summarise the law as it stands:
>
> (1) The essential principles are as stated by the Court of Appeal in *R v Selby District Council, Ex p Oxton Farms* [2017] PTSR 1103: see, in particular, the judgment of Judge LJ. They have since been confirmed several times by this court, notably by Sullivan LJ in *R (Siraj) v Kirklees Metropolitan Borough Council* [2011] JPL 571, para 19, and applied in many cases at first instance: see, for example, the judgment of Hickinbottom J in *R (Zurich Assurance Ltd (trading as Threadneedle Property Investments)) v North Lincolnshire Council* [2012] EWHC 3708 (Admin) at [15].
>
> (2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge: see the judgment of Baroness Hale of Richmond JSC in *R (Morge) v Hampshire County Council* [2011] PTSR 337, para 36 and the judgment of Sullivan J in *R v Mendip District Council, Ex p Fabre* [2017] PTSR 1112, 1120. Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave: see the judgment of Lewison LJ in *R (Palmer) v Herefordshire Council* [2017] 1 WLR 411, para 7. The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way—so that, but for the flawed advice it was given, the committee's decision would or might have been different— that the court will be

> able to conclude that the decision itself was rendered unlawful by that advice.
>
> (3) Where the line is drawn between an officer's advice that is significantly or seriously misleading—misleading in a material way—and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R (Loader) v Rother District Council* [2017] JPL 25), or has plainly misdirected the members as to the meaning of a relevant policy: see, for example, *R (Watermead Parish Council) v Aylesbury Vale District Council* [2018] PTSR 43. There will be others 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: see, for example, *R (Williams) v Powys County Council* [2018] 1 WLR 439. But unless there is some distinct and material defect in the officer's advice, the court will not interfere."

29. The criticisms made of the report relate to the following subjects:-

- Sustainability
- Design of the holiday lodges
- The holiday occupancy condition
- Permitted development rights as a fall-back position.

Sustainability

30. Ms. Olley relied upon paragraph 84 of the National Planning Policy Framework ("NPPF") published in 2019, which states:-

> "Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist."

31. She referred to the last sentence as a "proviso". In fact, it does not appear to be qualifying any of the preceding text. Instead, it *encourages* the use of previously developed land and sites which are well-related to existing settlements. It does not seek to *restrict* sustainable development in rural areas to such locations. At all events, the complaint is that the officer's report failed to address the last sentence of paragraph 84 of the NPPF.

32. It is well-established that an officer's report to committee does not have to set out and discuss each relevant policy in turn, if it appears that as a matter of substance, and on a fair reading, matters relevant to the proper application of the policy have been appropriately assessed. Such reports are to be read on the basis that they are addressed to an informed audience, the planning committee, who are to be taken as having a reasonable understanding of, and the ability to check, the policy framework in which the decision is to be taken (R (Lensbury Limited) v Richmond upon Thames London Borough Council [2017] J.P.L 96 at [8]).

33. The officer's report did not have to set out or even summarise paragraph 84 of the NPPF in order for MBC to be able to reach a lawful decision. The concept of sustainable development is well understood by planning committees. There was nothing in the report which indicated any misunderstanding of that paragraph.

34. The fact that one councillor happened to say during the committee's debate "we haven't looked at the sustainability of this site" would appear to be referable to that person's view on the discussion on that topic which had so far taken place during the meeting. It certainly could not be taken as an indication of any lack of understanding on the part of members about the principles of sustainable development. Nor could it be treated as a valid criticism of the officer's reports, because paragraph 3.16 of the report to the meeting on 5 December 2019 did address sustainability:-

> "The site is also not considered to be so unsustainable, in terms of its location, given that it is only some 0.5miles from the A229; and the NPPF does state that planning decisions should recognise that sites to meet local business in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. The NPPF is also clear that planning decisions should enable sustainable rural tourism and leisure developments which respect the character of the countryside, which this proposal is considered to do."

35. Paragraph 40 of the Claimant's skeleton complains that the officers misled members of the committee into thinking that a permanent development could be "sited anywhere in the countryside, whereas policy expects such sites to be adjacent to or well related to a sustainable settlement." That is a most unfair reading of the officer's report. It did not do any such thing. It adequately and fairly summarised the broad effect of the NPPF, including the reference to development sometimes being located "beyond existing settlements", something which the criticism in paragraph 40 of the Claimant's skeleton overlooks. There was no legal requirement for the report to refer also to the types of development which is encouraged in the last sentence of paragraph 84 of the NPPF, "where suitable opportunities exist." Unfortunately, this and other complaints raised

typify the excessively legalistic criticism of officer's reports which is deprecated in many of the authorities.

36. Furthermore paragraph 3.16 should not be read in isolation, but in the context of the further information which on 30 May 2019 the committee resolved to seek and which was subsequently provided. Such matters were summarised in paragraph 3.14 of the officer's report to the meeting on 5 December 2019. Sustainability takes into account the nature of the development proposed.

37. There is no merit at all in the complaint that the officer's report was inconsistent with the officer's delegated decision to refuse permission on 6 December 2019 for an application at Romany Stables at another location off Stilebridge Lane for permission to expand a traveller site, on the basis that that location was *not* sustainable. In her oral submissions Ms. Olley said that she was not trying to rely on the consistency principle in North Wiltshire District Council v Secretary of State for the Environment (1993) 65 P & CR 137, yet that is precisely what paragraph 40 of her skeleton alleged. If that was not the point, it is difficult to see what other legal error could have been pursued. The short point is that the Romany Stable proposal was for a form of *permanent* residential occupation and the report stated that the location would have been treated as being sufficiently sustainable if the intended occupants had had "gypsy and traveller status", but it was determined that they did not. This was not a comparable set of circumstances engaging the consistency principle.

38. For all these reasons the complaints in relation to the treatment of sustainability must be rejected.

Design

39. It is common ground that the site is located in the Staplehurst Low Weald landscape character area and has been assessed in MBC's study as being "sensitive to change" (see paragraph 6.07 of the officer's report to the meeting on 30 May 2019).

40. Ms. Olley referred to the policies in paragraphs 124 and 127 of the NPPF which emphasise the importance of good quality design in relation to "buildings and *places*" (emphasis added). She submits, and I accept, that where a proposal for a change of use includes the installation of features (not amounting to buildings) on the land, policies seeking good quality design are applicable to those features. It would be arbitrary to confine such policies to items which happen to involve "building operations" and to exclude objects which may affect the quality of the design of a "place". Here we are dealing with a site which is to be laid out to accommodate 18 holiday lodges, each of which may be up to 20m long, 6.8m wide and 3.05m high.

41. Policy DM 30 of MBC's Local Plan provides more detailed guidance on design in the countryside. So far as is relevant to this claim, it provides:-

> "Outside of the settlement boundaries as defined on the policies map, proposals which would create high quality design, satisfy the requirements of other policies in this plan and meet the following criteria will be permitted:

> i. The type, siting, materials and design, mass and scale of development and the level of activity would maintain, or where possible, enhance local distinctiveness including landscape features;
>
> ii. Impacts on the appearance and character of the landscape would be appropriately mitigated. Suitability and required mitigation will be assessed through the submission of Landscape and Visual Impact Assessments to support development proposals in appropriate circumstances;
>
> …."

42. Mr. Atkinson submitted for MBC that it is noteworthy that in the policy dedicated to holiday caravan and camp sites, policy DM 38, no reference is made to "design", as opposed to matters such as loss of amenity, impact on nearby properties and the appearance of the development from public roads. But I do not consider that anything turns on that. Those criteria in policy DM 38 are intended to guide decisions on the acceptability of locations for such development (i.e. "will be permitted *where*…"). A policy of this kind, which is used to control the location of many types of land use, does not render irrelevant a separate policy dealing with the quality of the design of a proposal in an acceptable location. It is also easy to conceive of circumstances where the acceptability of a proposal in a particular location involving the installation of holiday lodges might be dependent on having details of those facilities, including not only their layout and scale but also their design. A planning authority might take the view that these considerations were interrelated, rather than in separate "watertight" compartments. That would be a matter for the authority.

43. I acknowledge that some proposals for caravan sites might involve use for the stationing of towing or touring caravans which come and go, and so it would not be practical or appropriate for a planning authority to ask for design details of those caravans. But here the proposal was for holiday lodges which would be assembled on site and would remain *in situ* (see the Design Access and Planning Statement). The developer proposed that five of the lodges would be sold on 50 year leases to private owners in order to recoup capital expenditure and 13 would be "owned and operated as hire fleet by site owner". So it has not been suggested that this was a type of development for which it would be impossible to provide design details if the planning authority were to require them.

44. It is plain that there was some concern within the Planning Committee about the details of the design. At the meeting on 30 May 2019 the members resolved to defer their consideration of the application, so that details not only of the "actual layout" but also of the "scale and design parameters" could be obtained. The only information on that subject which was provided in the officer's report to the committee's meeting on 5 December 2019 was summarised in paragraphs 3.05 and 3.06 (quoted in paragraph 17 above). The members were told:-

    (i) The maximum size of each lodge, reflecting the definition in s.13 of the Caravan Sites Act 1968;

(ii) That it was not justified for the planning authority to seek more details of the lodges because planning permission was only required for the change of use of the land to station or accommodate the lodges for holiday purposes; and

(iii) That planning permission would be required for any additions to the lodges as defined in (i) above, for example, decking or verandas.

45. Points (i) and (iii) had previously been set out in paragraph 2.02 of the officer's report to the committee meeting on 30 May 2019 and so plainly would have been taken into account by them when they asked for future information on design. In any event, strictly speaking point (iii) was irrelevant to the application which was before the members, the scope of which was defined by point (i). It was the design of the development the subject of the application about which the members sought more information.

46. It was therefore solely point (ii) which sought to explain why that information was not being provided. In effect, the committee was told that it could not control design beyond the dimensions given in paragraph 3.05 of the officer's report when determining the planning application for the proposed change of use.

47. The transcript of the meeting on 5 December 2019 suggests that the question of design details was continuing to trouble at least some members.

48. I have reached the firm conclusion that point (ii) involved an error of law. The nature of the planning application before the council did not prevent the authority from exercising further planning control over the design of the proposed holiday lodges.

49. It became common ground during the hearing that merely because an application seeks permission for a change of use, the planning authority is not precluded from exercising planning control in relation to the design or appearance of structures or objects the siting (and retention) of which will be authorised by the permission. Mr. Atkinson suggested that that general proposition does not hold good in the case of a permission for the use of land to station caravans, because design can be controlled under the site licence code contained in the Caravan Sites and Control Development Act 1960.

50. By section 3(2) of the 1960 Act it is a precondition to the grant of a site licence that the applicant is entitled to the benefit of a planning permission (including a lawful use certificate – see s. 191(7)(a) of the Town and Country Planning Act 1990) for the use of the land as a caravan site (excluding a permission granted by a development order). It is common ground that because planning permission has been granted for holiday use only, the application for a site licence will not be treated as a "relevant protected site application" (s. 3(7) of the 1960 Act) and therefore the relevant authority, MBC, will be *obliged* to grant it within two months, so long as the applicant provides the particulars required under s. 3(2) (see s. 3(4)). Accordingly, it is agreed that the only control which the authority can exercise in relation to design matters under the 1960 Act is the power to impose conditions on the site licence contained in s. 5. It cannot refuse the licence on, for example, design grounds. The scope of that power to impose conditions is therefore critical.

51. Mr. Atkinson very properly accepted that his analysis has to yield to s.5(2) of the 1960 Act, which prohibits the imposition of a condition controlling the materials used in the construction of caravans authorised to be stationed on the site. Here the developer proposed the use of external weatherboarding to help assimilate the lodges into the countryside (paragraph 4.4 of the Design Access and Planning Statement).

52. Two points follow from that. First, the developer's statement acknowledges that there is at least one aspect of the design of the lodges which is relevant to the acceptability of this proposal in this particular rural location. Second, unless the planning permission were to contain a condition controlling the external materials of the lodges, it would not be possible to ensure that that design feature is in fact provided. It was not suggested to the members of the Planning Committee, nor was it suggested to the court, that the Visual Impact Assessment submitted to MBC by the developer negated either of those two points.

53. Mr. Atkinson referred to Esdell Caravan Parks Limited v Hemel Hempstead Rural District Council [1966] 1 QB 895 for the analysis by the Court of Appeal of the overlapping nature of the controls available under planning legislation and the 1960 Act. But there is no authority, nor is there anything in the legislation, to support the proposition that design (other than overall dimensions) cannot be taken into account and controlled when determining an application for planning permission to allow land to be used for the stationing of "caravans", whether by refusing it or by granting it subject to the imposition of conditions on the permission.

54. Although the powers under the two statutory codes overlap to some extent, it is necessary for an authority to be careful about assuming that any aspect of design which could be controlled under planning legislation can or should be left to the 1960 Act. First, as we have seen, s.5(2) of that Act excludes control over the materials used in the construction of a caravan, or in this case holiday lodge. Second, conditions may only be imposed on a site licence within the parameters set by s.5(1) of the 1960 Act. Third, a condition may not be imposed on a site licence purely for planning reasons, for example solely for the benefit of the visual amenities of other land (Babbage v North Norfolk District Council [1990] 59 P & CR 248, 255). Similarly, planning policies would appear to be immaterial to the licensing function under the 1960 Act.

55. Accordingly, it was an error of law for the Committee to be advised that the planning authority could not require appropriate design details to be provided, and so could not exercise planning controls in relation to the design of the lodges, by deciding whether or not to grant permission or by the imposition of conditions on any permission.

The holiday occupancy condition

56. Condition 3 of the planning permission states:-

> "All caravans permitted at the site shall be occupied for bona fide holiday purposes only and no such accommodation shall be occupied as a person's sole or main place of residence. The operators of the caravan park shall maintain an up-to-date register of the names, main home addresses and the duration of stay of all the owners/occupiers of each individually occupied caravan on the site, and this information shall be made available

> at all reasonable times upon request to the local planning authority. Relevant contact details (name, position, telephone number, email address and postal address) of the operators of the caravan park, who will keep the register and make it available for inspection, shall also be submitted to the local planning authority (planningenforcement@maidstone.gov.uk) prior to the first occupation of any of the approved caravans with the relevant contact details subsequently kept up to date at all times;
>
> Reason: In order to ensure proper control of the use of the holiday units and to prevent the establishment of permanent residency."

57. Policy DM 38 of the Local Plan required a holiday occupancy condition to be imposed so as to prevent the use of the site as a permanent encampment or the occupation of any lodge as a permanent residence.

58. The Claimant submits that condition 3 fails to achieve this because it fails to define what is meant by "holiday" or the permissible duration of any stay. It was said that a requirement for a register to be kept of the main home addresses and duration of stay for each occupier would facilitate a permanent encampment.

59. Ms. Olley stated that she was not contending that the condition was legally uncertain. Instead, she maintained that the condition was irrational and the officer's report misled the members about its effect.

60. There is no merit in these arguments. The condition did not need to define "holiday" or duration of stay in order to avoid irrationality or to be otherwise lawful. It is impossible to say that condition 3 fails the third test of validity set out in Newbury District Council v Secretary of State for the Environment [1981] AC 578, namely that it is so unreasonable that no reasonable planning authority could have imposed it. The condition makes it clear that no lodge may be occupied as the sole or main residence of the occupier. An occupier must reside wholly or mainly elsewhere. The register provides a suitable mechanism to enable the local authority to check on compliance with the condition and take enforcement action.

Permitted development rights as a fall back position

61. The Claimant complains that paragraph 6.01 of the report to the Committee meeting on 30 May 2019 advised members that the site had permitted development rights for use as a camping site for up to 28 days in any year. It is pointed out by the Claimant that this right does not apply to the use of land as a caravan site. But the short answer is that the report did not suggest otherwise. It is impossible to say that the report was misleading, let alone significantly misleading in some way which was material to the decision. Ms. Olley was entirely right not to place any emphasis on this point.

Relief

62. Mr. Atkinson submitted that if I should find that any error of law had been committed I should nonetheless refuse to grant a quashing order on the basis that it is highly likely

that the outcome for the Claimant would not have been substantially different if the conduct complained of had not occurred (s.31(2A) of the Senior Courts Act 1981).

63. I have decided that MBC misdirected itself by considering that the design of the lodges was not a matter for planning control beyond the dimensions stated in paragraph 3.05 of the report to the meeting on 5 December 2019. If that view had not been taken, it is highly likely that the Committee would have exercised that control, for example by imposing a condition regarding the external materials of the lodges. Given the terms of the resolution passed on 30 May 2019, the very limited information submitted in response on "design" and the concerns expressed by some members of the Committee, I consider that there is a very real likelihood that the Committee would have decided to require further information to be provided, in line with their earlier resolution, whether before taking a decision on whether to grant permission (possibly restricted to a specific design) or by imposing a condition requiring the submission of design details for subsequent approval by the Council and for the development to be carried out in accordance with those approved details. That is sufficient for me to conclude that a quashing order should not be refused under s.31(2A).

64. However, I would mention one further point, without needing to base my decision under s. 31(2A) upon it. Given the deferral of the application in May 2019 and the debate on 5 December 2019, it is possible that design details might have affected the views of officers and/or members on the acceptability of the proposed development in this location (subject to considering other material considerations). Of course, it is not for the Court to say what the outcome would have been if design had been further addressed as a planning consideration. Section 31(2A) does not require me to do this. The evaluation of material planning considerations would be for the Council, not the court.

65. Although, it forms no part of the challenge, or indeed my decision, I have also noted paragraph 6.13 of the officer's report to the meeting on 5 December 2019. The highways authority considered that a significant factor in favour of the proposal was that it was for lodges *in situ* and so there would no longer be touring caravans going to and from the site. This reflects a point relied upon by the developer in the Design Access and Planning Statement. The highway authority envisaged that a condition would be imposed to ensure that the "caravans" to be stationed on site would exclude the "touring" variety and be restricted to lodges. So far as I can see that was not reflected in the permission granted and so the quashing of the decision will enable the control of that aspect to be considered as well.

Conclusion

66. The claim is allowed but only on the single legal error I have identified as to the power of the planning authority to control design. I reject all the other grounds advanced. The upshot is that the grant of planning permission dated 13 December 2019 must be quashed.

Costs

67. The Claimant seeks an order that she be paid the whole of her costs as set out in the Statement of Costs, in the sum of £37,338, but then subject to the Aarhus cap of £35,000. The Defendant submits that because the Claimant has been successful on only

one of the criticisms advanced, she should recover only a proportion of the £35,000. The figure suggested is £15,000.

68. The correct approach is for the Court to assess first what would be the reasonable and proportionate amount of costs for the Claimant to recover, applying the principles in CPR 44, before going on to apply the Aarhus cap if that assessed amount should exceed £35,000. The appropriate amount should not be assessed as some proportion or part of the capped figure (CPRE (Kent Branch) v Secretary of State for Communities and Local Government [2020] 1 WLR 352).

69. For a relatively simple case of this nature, involving short grounds and not very much documentation, the amount claimed, £31,269 net of VAT, is excessive. It is impossible to see how nearly 40 hours in total needed to be spent by the Claimant's Solicitors on attendances, or a further 30 hours of work (amounting to £7,852) on reading or preparing documents. They also claim a further £1380 for preparing the costs schedule. Viewed overall, I very much doubt that the fees indicated for the Solicitors' work are reasonable and proportionate for this case. However, although the costs schedules of the parties were exchanged in advance, the Defendant did not take the opportunity to make any specific points about these or any other items in the Claimant's schedule. That, of course, is the object of the prior exchange of schedules. But because these points have not been taken, the Claimant has not had the opportunity to respond on them, In these circumstances, and having regard to the amounts at stake, it would be an improper use of the court's resources and the overriding objective to adjourn the matter further so that such matters can be explored. I will disregard the concerns to which I have referred.

70. Although the claim has been successful and the decision must be quashed, the Claimant has been successful on only one of her arguments and the Defendant has been successful in resisting the others thereby incurring costs. Mr Atkinson has made some powerful submissions which I generally accept. In the circumstances, I consider that the Claimant is only entitled to recover one half of her claimed costs, which I assess at £18,669.