Neutral Citation Number: [2023] EWHC 901 (Admin)

Case No: CO/3427/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/04/2023

Before :

HIS HONOUR JUDGE JARMAN KC
Sitting as a judge of the High Court
Between :

R (oao) FRIENDS OF THE WEST OXFORDSHIRE COTSWOLDS	**Claimant**
- and -	
WEST OXFORDSHIRE DISTRICT COUNCIL	**Defendant**
-and-	
HARPERCREWE LIMITED	**Interested Party**

- -
- -

Mr Ben Fullbrook (instructed by **Leigh Day**) for the **claimant**
Ms Kate Olley (instructed by **Legal Services** of the **defendant**)
The **interested party** did not appear and was not represented

Hearing dates: 30 March 2023
- -

Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email and released to the National Archives for publication. The date and time for hand-down is deemed to be 10:30am on the 20 April 2023.

HHJ JARMAN KC:

Introduction

1. By a decision dated 20 January 2020, the defendant as local planning authority (the authority) granted planning permission for residential development of 25 dwellings comprising self/custom build, market housing and affordable housing (use class C3) and a 12 bed supported living (sui generis) facility with associated access, parking and landscaping in respect of land south of Forest Road, Charlbury, Oxfordshire on an application made by the interested party (the developer). To the west of that land is an ancient woodland known as Rushy Bank. With the application was submitted ecological assessments and biodiversity management plans showing a proposed 5 meter buffer zone between the proposed development and the ancient woodland to protect it and the wildlife habitats, including those of endangered species, particularly those contained in the understorey. The permission was subject to a number of conditions including those requiring the approval of plans and schemes to protect these habitats and the trees and understorey.

2. The developer then sought approval of such plans, which the authority gave on 10 August 2022 and discharged such conditions. This was despite that fact that the plans approved showed that the 5 meter buffer could not be achieved at three points along the boundary. The claimant seeks to challenge that decision on four grounds, but the essence of each relates to the approval of plans without the full 5 meter buffer zone in places, notwithstanding that being originally required by condition. The essence of the authority's case in resisting the challenge is that the loss of the buffers zone at these points is very small and that it was a matter of planning judgment of its officers to discharge the conditions on this basis.

3. The process of how that change came about is not well documented. The authority seeks to elucidate on the documents by relying on witness statements of two of its officers: Philip Shaw, its business manager for development and sustainability who was the case officer in the application for planning permission; and Abbey Fettes, its development manager, who was the case officer in the application to discharge conditions. The claimant submits that these contradict the contemporaneous documents or seek to fill a vacuum in them, and so the statements should not be admitted, or if they are, should be accorded little weight. I shall have to return to that issue.

Policy background

4. What I propose to do first is to set out the uncontentious background. The importance of ancient woodland and its habitats are well recognised in policy and guidance. The National Planning Policy Framework (NPPF) provides at paragraph 180 c) states :

> "... development resulting in the loss or deterioration of irreplaceable habitats such as ancient woodland and ancient or veteran trees should be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists."

5. In a footnote to that sub paragraph examples of such exceptional reasons are given as infrastructure programme projects, including nationally significant infrastructure projects where the public benefits would clearly outweigh the loss or deterioration of habitat.

6. The authority's adopted local plan, The West Oxfordshire Local Plan 2013, at paragraph 8.9 seeks to protect such woodlands as follows;

> "As an example of irreplaceable habitat, ancient woodland, in particular, need special care with buffers of additional planting of native trees of at least 15 metres between woodland and development."

7. In requiring such a buffer the local plan follows Standing Advice on Ancient Woodland 2012 of Natural England (NE). The Forestry Commission has similar standing guidance. The former states:

> "For ancient woodlands, the proposal should have a buffer zone of at least 15 metres from the boundary of the woodland to avoid root damage (known as the root protection area). Where assessment shows other impacts are likely to extend beyond this distance, the proposal is likely to need a larger buffer zone"

8. However, the advice makes it clear, as set out below, that specific advice on particular applications will not usually be given and that it is for local planning authorities to apply the relevant policies, except in given cases or exceptional circumstances, which do not apply here:

> "You should take this advice into account when making planning decisions that affect ancient woodland, ancient trees or veteran trees. Natural England and the Forestry Commission will only provide specific advice on planning applications as set out in the 'when to contact' sections, or in exceptional circumstances."

Factual background

9. The application for permission was supported by an ecological assessment and biodiversity management plan which stated that a 5 meter buffer must be provided between the proposed development and the ancient woodland. A landscape masterplan showing such a buffer was also submitted. The authority consulted its ecological consultant on the application, who advised that if all the recommendations contained in those documents could be fully implemented then the proposed development would be acceptable in ecological terms. In order to secure this, the consultant recommended the imposition of a condition, which was subsequently imposed on the permission as condition 8.

10. The authority also consulted NE as a statutory consultee. In relation to statutory nature conservation sites, and the ancient woodland in question does not fall within such as site, NE stated that it had no objection. In relation to other sites, NE's response said this, in line with its standing advice:

> "Other advice
>
> We would expect the Local Planning Authority (LPA) to assess and consider the other possible impacts resulting from this proposal on the following when determining this application: ..
>
> local sites (biodiversity and geodiversity)
>
> local landscape character
>
> local or national biodiversity priority habitats and species.
>
> Natural England does not hold locally specific information relating to the above. These remain material considerations in the determination of this planning application and we recommend that you seek further information from the appropriate bodies (which may include the local records centre, your local wildlife trust, local geoconservation group or other recording society and a local landscape characterisation document in order to ensure the LPA has sufficient information to fully understand the impact of the proposal before it determines the application."

11. The ancient woodland comes within the category of local priority habitats, and accordingly the advice from NE was that the authority should seek further information to ensure that it had sufficient information to understand fully the impact of the proposal before it determined the application. Mr Shaw in his report to the planning sub-committee did not relay this part of the advice, but simply stated that NE had no objection. However, as stated above, the authority did engage ecological consultants.

12. There was and is no challenge in the present case as to why those policies and that advice was not followed in this case, and it is not clear why they were not. Mr Shaw made no mention of it in his report to the planning sub-committee which considered the application for planning permission. The minutes of the meeting show that there was some discussion about the buffer zone, but not about why it was 5 meters instead of 15 meters wide. Although there is no challenge in this respect, in my judgment, the fact that the buffer zone in the permission is only one third of the distance set out in policy and guidance serves to underline the importance of the buffer zone which was required in the permission.

13. The application was approved and permission granted, subject to conditions. The first condition was the usual one that the development must be commenced within three years, that is by 20 January 2023.

14. Condition 8 provides as follows;

> "Before any works begin on site a construction management plan must be submitted for approval as per the recommendations in the submitted Phase 2 :Great Crested Newts Report (Earth Ecology), Ecological Assessment Final & Biodiversity Management Plan Final (Wychwood Biodiversity

> Aug 15) as well as a ten year Ecological Management plan based on the Biodiversity Management Plan Final (August 15) which provides further detail to show who will be responsible for carrying out the proposed works including all monitoring work, details and the mechanisms to ensure the success of the proposed buffer zones and enhancements must be submitted for approval to the LPA. Once approved all the works must be carried out as per approved Construction Management Plan and the Ecological Management Plan and thereafter permanently maintained."

15. Composite plans were submitted to the council pursuant to that condition and approved. These expressly referred to the buffer zone of 5 meters along the western woodland edge as being agreed with the authority. In respect of the landscape and building phase of the development, the plans states this at paragraph 3.7.8:

> "Buffer zones
>
> 3.7.8. Buffer zones will be created between the site boundaries and the development zone as per the recommendations within the biodiversity management plan and as agreed by the local planning authority. The buffers will be built up to form berms (with soil from the site) and can comprise a variety of tussock forming grass species. Management will be kept to a minimum to encourage the grassland to succeed to scrub which will create a sturdy barrier between the site and the surrounding natural habitat."

16. Condition 12 required the provision of a landscaping scheme. Condition 13 required the provision of a tree protection scheme which complies with BS 5837:2012. The reasons given for those conditions were to safeguard the character and landscape of the areas, or features that contributed to it. Condition 13 provides;

> "No development (including site works and demolition) shall commence until all existing trees which are shown to be retained have been protected in accordance with a scheme which complies with BS 5837:2012: 'Trees in Relation to design, demolition and construction' has been submitted to, and approved in writing by, the Local Planning Authority. The approved measures shall be kept in place during the entire course of development. No work, including the excavation of service trenches, or the storage of any materials, or the lighting of bonfires shall be carried out within any tree protection area."

17. A scheme, dated 20 December 2021, was submitted under condition 13 purporting to show the location of root protection areas (relating to protected trees) alongside the location of tree protection fencing to BS5837 requirements, section 5.5.1 of which is that any tree protection plan is superimposed on a layout plan of the site. Section 6.2 emphasises the important of tree protection fencing and barriers.

18. The application for approval in relation to conditions under the planning permission, was made in January 2022. In response, the following month the claimant wrote to the authority to highlight continuing discrepancies and conflicts with this scheme and to object to the release of conditions 8 and 12. It was pointed out that the application confirmed that the consented scheme failed to make allowance for the specified 5 metre woodland buffer. Reference was made to the policies and advice set out above which required a 15 meter buffer. A week later the claimant submitted further plans showing what it regards as the loss of ancient woodland or the buffer zone.

19. These were forwarded to the developer for comment, which was given in an email dated 18 February 2022 and which included the following:

> "The plans as submitted were considered to accurately reflect the approved redline site area (as opposed to the site identified in the S106) however, following a further review of this in light of the FoEV comments we note that there is a discrepancy in the north west corner where the site extends west. We have therefore amended the plans to correct this small discrepancy and I attach these for your further review. You will note that on the amended plan the 5 metre buffer which was proposed as part of the ecology reports submitted as part of the original application cannot physically be achieved in this area. As noted above, the quality of the available original red line site plan means that the buffer will now clip the corner of the first dwelling in this location. You will see that we have proposed to extend the buffer around the dwelling with the exception of the small incursion from this property.
>
> It is important to note that this matter is not through fault of the applicant but that the original ecology reports did not accurately consider this location. You will also see that we are proposing an area of planting on the western parcel of land to provide enhanced biodiversity in this location."

20. Accordingly, the developer did not accept the loss referred to by the claimant, but instead indicated that only one small incursion in the north west corner was involved. This brought a further response from the claimant, including the following:

> "In the absence of further information about the stance which the Council's officers are taking on this application we would like to comment on the revised plans and accompanying explanations which the applicant's agent has submitted.
>
> The applicant has acknowledged the error which we identified with the position of the site boundary on the north east corner of the ancient woodland…
>
> We note the applicant's request that a reduced buffer now be accepted in this part of the site rather than relocating the development. Once again we would highlight to WODC its policy requirement for a minimum 15m native woodland

> planted buffer (Local Plan 2031 para 8.9 and policy EH3 as updated by NPPF para 180, aligning with Natural England Standing Advice). In this context we would suggest any further concession on the already inadequate 5m buffer is impossible to justify."

21. The claimant wrote again a week later after carrying out a more detailed review of the plans and highlighting further discrepancies. Following this, on 6 July 2022 the developer sent an email to Ms Fettes, which included the following;

> "As discussed with you previously, the requirement for the buffer around the edge of the site cannot be physically achieved in some locations due to the proximity of the dwellings to the boundary. This would have been apparent as part of the consideration of the application."

22. The developer also submitted revised landscape masterplans, which showed two further points where the 5 meter buffer zone could not be achieved, due to what was said to be "redline discrepancies." Cumulatively this difference amounted to less than 5% of the original zone. However, at the point previously identified to the north west of the site, only about half of the 5 meter could be achieved. At one of the new points identified, none of the 5 meters could be achieved, and at the other the majority could be achieved.

23. In July 2022, the claimant also made a request under the Freedom of Information Act 2000 for disclosure of comment by the authority's biodiversity and landscape officers on the application. Ms Fettes replied:

> "We have no ecological comments to share. The council's ecologist attended a project group meeting on 21st March and declared no objections on ecological grounds. There are no minutes from this internal meeting. Landscape and tree comments attached."

24. The application was dealt with by Ms Fettes, according to usual practice on such an application. She issued a notice dated 10 August 2022 approving the discharge of several conditions, including those referred to above. In respect of condition 8, the notice stated that the details submitted for the construction management plan in respect of ecology were considered sufficient to discharge the condition. In relation to condition 13, it was said the details as submitted are acceptable to discharge the condition. In relation to condition 12, this was said:

> "Whilst the requirement for the buffer around the edge of the site cannot be physically achieved in some locations due to the proximity of the dwellings to the boundary, the additional details (submitted 6/7/22) showing the amended red line are considered acceptable to discharge the condition."

The authority's witness statements

25. I now return to the issue whether I should admit the witness statements of Mr Shaw and Ms Fettes. Each sets out a narrative of how the application to discharge the conditions was dealt with in a way which is not clear from the scant contemporaneous documentation available.

26. The discretion to admit such evidence has been the subject of a number of authorities. Most recently, the Court of Appeal (Bean LJ, Sir Keith Lindblom and Sir Stephen Irwin) in *R (United Trade Action Group) v TfL* [2021] EWCA Civ 1197, referred at paragraph 125 of the court's judgment to the ample body of authority to indicate the correct approach and after a review of them extracted seven points. For present purposes I need only refer to some of them:

> "(1) The court will always be cautious in exercising its discretion to admit evidence that has come into existence after the decision under review was made, as a means of elucidating, correcting or adding to the contemporaneous reasons for it…The basis for this principle is obvious. Documents or correspondence or other explanatory evidence generated after the event cannot have played any part in the making of the challenged decision… The court must avoid being influenced by evidence that has emerged after the event, possibly when proceedings have been foreshadowed or issued. So the need for caution is plain.
>
> (2) [There] is no black and white rule which indicates whether a court should accept or reject all or part of a witness statement in judicial review proceedings… A claim for judicial review must focus on the reasons given at the time of the decision. Subsequent second attempts at the reasoning are inherently likely to be viewed as self-serving
>
> (3) Evidence directly in conflict with the contemporaneous record of the decision-making will not generally be admitted…
>
> (5) It is not likely to be appropriate for the court to admit evidence that would fill a vacuum or near-vacuum of explanatory reasoning in the decision-making process itself, expanding at length on the original reasons given. Such evidence may serve only to demonstrate the legal deficiencies for which the claimant contends.
>
> (6) When the admissibility of evidence is in dispute in a claim for judicial review, the court's approach should be realistic, and not overly exacting. Rarely will it be necessary for a judge to carry out a minute review of every paragraph and sentence of a witness statement, paring the statement down to the admissible minimum…

27. Mr Fullbrook for the claimant submits that the statements are designed to fill a vacuum, but moreover they contradict contemporaneous documentation. For example, Mr Shaw says that the discrepancies in the red line boundary came to light after licenced felling of poplars in the ancient woodland in November 2021 which facilitated the fixing of more precise boundaries. It is not easy to see why the felling should so facilitate, but in any event, the contemporaneous documentation suggests that it was the claimant's correspondence which led to the developer eventually identifying the three points where the buffer zone is not achievable.

28. In respect of the statement of Ms Fettes, she says that the authority's ecology officer considered two points where the buffer could not be achieved, but she also says that the officer left the authority in March and it is not suggested this officer was replaced before Ms Fettes' decision was made. However in March only one point had been identified where the 5 meter buffer zone could not be achieved, and two others were not identified until July.

29. Mr Fullbrook realistically accepts that in this case there is little between not admitting this evidence, and admitting it but according it little weight. Indeed, he points out that Mr Shaw, in setting out the reasons why the loss of the buffer zone was not viewed as unacceptable (or to use his words that there were no "showstoppers"), shows that the reasoning is flawed. The first reason Mr Shaw gives is that NE had seen the original application where the siting of the houses in relation to the ancient woodland had been explicit and had raised no objections. As indicated above, that is not full or accurate summary of the stance of NE. Its stance was not to give specific advice on the application, but to require the authority to seek information to ensure it understood the impact of the development on the ancient woodland, before it gave permission.

30. This in my judgment an important difference, particularly given that the authority consulted its ecologist when it appeared that the developer was maintaining that there would be a loss of the buffer at only one point, but then acknowledged that there would be a loss at two more points, one of which involved a loss of the whole of the 5 meters. Further information on the impact of this loss was not obtained by the authority, because by then its ecologist had left and had not been replaced.

31. I have come to the conclusion I will admit both statements. Each is from an officer of the authority who had some involvement in dealing with the application for permission and/or the application for the discharge of conditions. However, I treat them with a good deal of caution, particularly where they give evidence which is contradicted by the contemporaneous documentation.

Ground 1: The approval of plans under condition 8 does not account for the impossibility of achieving the 5 meter buffer

32. I turn now to the grounds. Mr Fullbrook submits that the authority approved the plans submitted under condition 8, requiring a 5 meter buffer zone, but also approved the application to discharge this condition, even though this zone was not fully achievable as indicated above. He submits that the most likely explanation for this is that the plans under condition 8 were received by the authority in December 2021 before the discrepancies in the plans had been identified and that, whilst the landscape masterplan was revisited, the plans submitted under condition 8 were not.

33. He further submits that by approving the plans under condition 8 (which required the full 5 meter buffer zone) and approving the discharge of the condition on basis of the landscape master plans (which did not at the three points referred to above fulfil that requirement), the authority imposed two mutually inconsistent obligations and a planning permission which imposes mutually inconsistent obligations will be unlawful. A breach of planning condition carries with it potential criminal penalties. He relies on the decision of the Court of Appeal *Finney v Welsh Ministers* [2019] EWCA Civ 1868, where the court considered a planning permission which permitted two wind turbines with tip heights of 100 meters. On an application under section 73 of the 1990 Act to vary conditions, the tip heights were changed by an inspect on appeal to 125 meters. Lewison LJ, giving the lead judgment of the court, held that to change the description of the permitted development on an application to vary conditions was impermissible. At paragraph 43 he said:

> "A condition altering the nature of what was permitted would have been unlawful. That no doubt, was why the inspector changed the description of the permitted development. But I my judgment that changes was outside the power conferred by section 73."

34. Ms Olley points to the reasons which Mr Shaw gives for the decision to approve the discharge application. These include that the reduction in the buffer zone did not affect any trees or the understorey, and that the conditions in relation to the buffer zone were recommendations as opposed to requirements. In both professional and practical terms the scheme had been assessed as acceptable and officers took the view that no planning harm had been identified which would have justified refusal. She submits that these are classically matters of planning judgment.

35. I accept that, as far as that submission goes, these matters do involve planning judgment, with which the court cannot interfere. However, what that submissions ignores is what was required by condition 8, which was twofold. The first requirement was that the plans should be submitted for approval before the commencement of development, in order to ensure the success of the proposed buffer zones. The plans submitted in support of the original planning permission showed that the proposed buffer zones were 5 meters wide, and the authority's ecological consultant, who recommended what became condition 8, indicated that the proposals were acceptable if fully implemented. The plans submitted under condition 8, and approved, also showed a 5 meter buffer zone.

36. The second requirement of condition 8 is that all works must be carried out and maintained as per the approved plans, in other words with a 5 meter buffer zone.

37. Although I was not referred to authority on the meaning of conditions attached to planning permissions, the position is well established in the authorities, including the Supreme Court, most recently in *DB Symmetry Ltd v Swindon Borough Council* [2022] UKSC 33. The meaning of a condition is a matter of construction for the courts, and must be read in the context of the planning permission as a whole and given a sensible meaning where possible. Lord Hodge, giving the lead judgment, said this at paragraph 66:

> " In summary, there are no special rules for the interpretation of planning conditions. They are to be interpreted in a manner similar to the interpretation of other public documents. The court asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense."

38. In my judgment, condition 8, as worded, permits no room for officers subsequently to vary the width of the buffer zone on an application to discharge. It could have been worded in that way, but it was not. What it requires was is that the works and maintenance are to be carried out as per the approved plans, which provided for a 5 meter buffer zone.

39. The point in *Finney* was a subtly different one, namely whether conditions could be varied on an application under a section 73 of the 1990 Act to change the description of the permitted development. Nevertheless, I accept that the decision under challenge was inconsistent with what was required under condition 8. In my judgment ground 1 succeeds.

Grounds 2 and 3: obligation to discharge and the best achievable result

40. In respect of grounds 2 and 3, in its response to the claimant's pre-action protocol letter, the authority stated more than once that it had made this decision because the areas where the buffer cannot be physically achieved were apparent when planning permission was granted and the reserved matters stage cannot take away what has in principle been granted. Ms Olley, for the authority, made it clear that this point is no longer relied upon by the authority, saying that it was stated in error but was unable to assist on how that error came to be made.

41. Accordingly ground 2, and its alternative ground 3, no longer fall for determination.

Ground 3A: misunderstanding and/or acting irrationally in reliance upon NE's consultation response

42. The evidence of Mr Shaw and Ms Fettes states that the authority only became aware that the 5 meter buffer zone was not achievable after the grant of permission, and thus, Mr Fullbrook submits, that same must apply to NE. In any event, NE did not say that it had no objection to the 5 meter buffer zone between the proposed development and the ancient woodland, but that it was for the authority to assess impact. If, as Mr Shaw now says, the lack of objection by NE was a reason to approve the discharge of conditions 8 and 12, the approval should be quashed.

43. In response, Ms Olley again submits that this was a matter of planning judgment, which she says is the "golden thread" running through the defendant's case. However, that ignores the first reason given by Mr Shaw for the decision to approve the discharge application, albeit that it was followed by other reasons. As I have indicated above, in my judgment, to state that NE had no objection involves a failure fully or

accurately to set out its response, as summarised above. Although the authority did consult ecology advice, it did so at a time when only one encroachment in the buffer zone had been identified, and did not do so again when two further points had been identified, one of which involved the loss of the whole width. NE advice was that it was for the authority to seek information to assess the impact on the ancient woodland, and simply to say that NE had no objection displays a material and significant misunderstanding of that advice. In my judgment ground 3A is made out.

Ground 4: The tree protection plan approved under condition 13 is inaccurate and does not comply with BS5837:2012

44. Mr Fullbrook submits that the tree protection plan submitted in December 2021 predates the changes made in the landscape master plan and has not been updated to take account what was termed the "redline discrepancies" or changes in the site boundary which subsequently necessitated the revision of the 5 meter buffer zone and the fact that it could not be achieved at three points. In approving the tree protection plan, therefore, the authority made a mistake as to its accuracy, or failed to have regard to the requirement of the quoted BS for an accurate plan or acted irrationally in approving it when condition 13 requires compliance.

45. Ms Olley submits that the authority in dealing with the application to discharge this condition sought the advice of its forestry and landscape officer, who had recommended the imposition of condition 13, and who was aware of the discrepancies.

46. It is not difficult to see that unless the site boundary is correctly shown it may not be possible to confirm that the requirements of tree protection fencing and barriers set out in section 6.2 are complied with. In the witness statement of Ms Fettes, it is accepted that in the event the requirements of condition 13 were not wholly complied with, although it is said that they were substantially complied with.

47. In my judgment, for similar reasons to that under ground 1, this ground also succeeds. Condition 13 required an approval of a scheme to protect retained trees before commencement of works, and for the measures to be kept in place during work, to comply with the relevant BS. The scheme, which was approved, was based on plans before the redline discrepancies were discovered. There is admitted noncompliance. In my judgment, what condition 13 requires is compliance, not substantial compliance.

Relief

48. The developer has now made an application under section 73 of the 1990 Act to vary conditions to ensure the delivery of the 5 meter buffer zone, to which the claimant has objected, and it has recently been granted, but that can be challenged. Mr Fullbrook submits that this different application for planning permission cannot render this claim academic or provide any other basis for refusing relief.

49. The authority and the developer have entered into an agreement under section 106 of the 1990 Act which provides that upon grant of the section 73 application the developer will not seek to implement the development as permitted under the planning permission subject to the present conditions. Moreover, both these parties

accept that that development was commenced in reliance upon the discharge of conditions under challenge. If that discharge is quashed then it as least arguable that the permission has not been validly commenced by 20 January 2023 and cannot now be lawfully commenced.

50. In my judgment, that is a sufficient reasons to show that this claim is not academic. Moreover, I am not persuaded that it appears to be highly likely that the outcome for the claimant would not have been substantially different if the conduct set out above in relation to grounds 1, 3A, or 4 had not occurred, either cumulatively or individually. Accordingly, in my judgment the court is not required to refuse relief under section 31 (2A) of the Senior Courts Act 1981. Given the express importance of the buffer zone (which was only one third of what policy required) and the tree protection measures, the decisions complained of must be quashed and resubmitted for determination in accordance with the foregoing meanings of the conditions sought to be discharged.

51. Counsel helpfully indicated that any consequential matters which cannot be agreed can be dealt with on the basis of written submissions, which if necessary should be filed within 14 days of hand down of this judgment, together with a draft order, agreed as far as possible.