Neutral Citation Number: [2018] EWHC 2007 (Admin)

Case No: CO/462/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/07/2018

Before :

MR JUSTICE DOVE

- -

Between :

THE QUEEN (on the application of HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND (known as HISTORIC ENGLAND))	**Claimant**
- and -	
MILTON KEYNES COUNCIL	**Defendant**
- and –	
ST MODWEN DEVELOPMENTS LIMITED	**Interested Party**

- -
- -

Richard Harwood QC (instructed by **Sharpe Pritchard LLP**) for the **Claimant**
Alistair Mills (instructed by **Legal Services Milton Keynes Council**) for the **Defendant**
Reuben Taylor QC (instructed by **Clyde and Co LLP**) for the **Interested Party**

Hearing date: 23rd May 2018

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Judgment Approved

Mr Justice Dove :

Background

1. In 1833 Robert Stephenson, having been appointed to survey the route with his father George, signed the contract to build a 112-mile railway from Camden Town to Birmingham which had been authorised by act of Parliament. The project, known as the London and Birmingham Railway ("L&BR") was the first main railway line to London, and it has been contended was the largest piece of engineering to be undertaken in its day. The Act which authorised the construction of the L&BR contained a clause requiring that railway works be provided around the midpoint of the line so as to enable locomotives to be inspected and kept in good order during the journey. A large field called "Post Hill Ground" was selected for these works on the basis that it was near to the (then) Grand Junction Canal whose wharfing facilities could be used. Whilst there had been a medieval settlement close by, that village had been deserted by the middle of the 17th century. There was therefore no settlement in this location prior to the coming of the railway. When the line opened in 1838 a

temporary station was provided. Further land was purchased to enable the construction of permanent station and worker's housing in 1840.

2. By the mid 1840's it had become clear that there was a need for the railway companies to manufacture their own locomotives and in 1845 the first locomotive was built at the Wolverton Works. In 1846 the L&BR was amalgamated with other railway companies to form the London and North-Western Railway which established its principle engine works at Wolverton. Thereafter the town of Wolverton grew up around the railway works which were themselves prospering. The manufacture of railway carriages commenced in the 1870s and the main line was rerouted away from the works which continued to expand and prosper leading to the town of Wolverton doubling in size in the period running up to the First World War.

3. Amongst the legacies of the establishment of the railway, its works and the surrounding town of Wolverton are a collection of buildings on the Wolverton railway works site ("the Site") of varying ages, some dating back to the mid-19th century and several from the period of the flourishing and expansion of the works towards the end of the 19th and early 20th century. The use of the site as an operational railway works continues, and over the course of time has caused functional alterations to be made to buildings within the site.

4. In recognition of the site's historic significance on 4th December 2001 the site formed part of an area designated as the Wolverton Conservation Area ("the Conservation Area"). The designation was accompanied by a statement of significance which was phrased in the following terms:

> "STATEMENT OF SIGNIFICANCE
>
> 1. The significance of Wolverton as an historic area derives from the following attributes:
>
> 1. Its location as a critical component of the world's earliest railway developments
>
> 2. The physical survival of some of its earliest built elements, including bridges and other structures built under Robert Stephenson's direction.
>
> 3. The survival of the pattern of development and range of buildings from its zenith of growth and production.
>
> 4. The portrayal of technological and social history represented in the buildings and layout of the town
>
> 5. The concentration of a number of industrial, public and religious buildings of special architectural and historic interest
>
> 6. The interest of a collection of building forms, functions and spaces which are unique in the region
>
> 7. The relationship of the town to part of the Grand Union Canal which runs through it

8. The archaeological potential to recover further evidence of Robert Stephenson's and other important early works.

9. The potential benefits to the physical character and life of the community which may be achieved through proactive conservation measures"

5. The statement went on to identify the prevailing uses and their influence in the following terms:

> "Prevailing uses and their influence
>
> 12. The town can be defined in terms of the stark division between its inhabited and its Carriage Works sections and ancillary railway buildings. The inhabited part consists of houses representing a range of dates from the early 1800s to about 1910. Some limited building continued into the 1920s and 1930s. Later 20C development or redevelopment has made relatively little direct impact upon Wolverton and, in this respect, the town can be considered fortunate.
>
> 13. The railway company which built the town to serve the Works and railway buildings to the north and east, with their enclosing walls and embankments of military proportions, once determined virtually every aspect of life in the town. Employment is now diversified into other uses within some of the former works buildings, expanded industrial areas and commuter life styles, and the community is also more diverse in interests, religious and ethnic makeup and social groupings. These changes demonstrate how accommodating of new uses, lifestyles and technologies the old buildings can be, without necessitating change to their external face."

The document went on to review the architectural interest of the Conservation Area and in particular noted as follows:

> "18. Of particular importance is the site of line, stations, repair sheds and workshops for the first inter-city railway in the world. This was Robert Stephenson's London to Birmingham line. He began the first surveys in 1830, the Act of Parliament received William IV's royal assent on 6 May 1833 and the line was inaugurated on 17 September 1838 (one year only into the "Victorian" era). Wolverton's canal and railway heritage began during the late-Georgian era and continued through Victoria's long reign and into the mid-20C."

6. In 2009 the defendant commissioned a review of the Conservation Area which was published in April 2009 under the name "The Wolverton Conservation Area Review" (the "Conservation Area Review"). The Conservation Area Review was commissioned in the light of changes since the Conservation Area's first designation and "pressure for development within and around Wolverton". The review document was lengthier and provided greater detail than the original 2001 Statement of Significance. The Conservation Area review reassessed the definition of the special

interest of the Conservation Area, defining its special interest so far as relevant to the present case as follows:

> "Wolverton is characterised by its diverse mix of late nineteenth and early twentieth century terraced housing, industrial quarters, commercial areas and functional open spaces. There are active shopping and commercial frontages, busy with traffic and people, that contrast with the quieter residential streets and their distinctive, narrow, interconnecting back ways.
>
> Whereas the streets are open to exploration, the industrial quarter is closed off and isolated from the town. Built on a much larger scale, the works built by the London and Birmingham Railway underpinned the economy and development of Wolverton from the middle of the nineteenth century until being significantly scaled down during the late 1970's and 1980's. In their heyday the works were nationally renowned in a similar way to those of Crewe and Swindon. A collection of important buildings and structures from this period still survives in sufficient numbers to convey the historic scale and cohesiveness of the site's functions, processes and purpose.
>
> The railway works are abruptly divided from the commercial and residential areas by an imposing boundary wall that runs along Stratford Road. The effect is to emphasise the separation of industrial activity from domestic life. This abrupt division of function contrasts with other types of industry where the gradual growth of a specialist trade mixed factories and houses together (shoemaking in Northampton or Birmingham's Jewellery Quarter for example)."

7. Against the background of this broad definition of the special interest of the Conservation Area the Conservation Area review went on to examine within its character assessment the qualities of the site described for the purposes of that document as "The Works". In particular the document provided as follows:

> "**2.3.25** Although from outside the works are largely hidden from view, once inside, their size and complexity is impressive. Whilst this vastness once again prevents the whole site being seen from a single vantage point, even from within the site, there are long east – west linear views, enhanced by the receding perspectives of the railway tracks, that very effectively convey an impression of the works' extent. As such the buildings that survive remain noteworthy statements of Victorian industrial endeavour.
>
> **2.3.26** Towards the east of the site the derelict or semi derelict buildings and their environs evoke a sense of functional, harsh, unkempt, bleakness. These cavernous structures are comparatively low in height in relation to their length. Whilst unadorned architecturally, their scale nonetheless imbues them with a monumental quality; a quality accentuated by the rhythmic regularity of large window openings and their pier

and panel construction. The roofs are now generally of grey roofing felt laid over timber (exposed in places) that complements the muted orange of the bricks.

2.3.27 Some of the buildings retain the faint remnants of the black, brown and greens of Second World War camouflage, indicating the significance of the site well into the Twentieth Century and its involvement in the war effort. The patterns still discernible mark out terraced houses along the length of at least part of one of the buildings. The presence of the faded camouflage, and the attendant history that its presence evokes underlines further the immense cultural value of these venerable structures.

2.3.28 The much busier, western end, where new carriages are still built and repaired, provides some insight into the atmosphere that would once undoubtedly have been present throughout the works.

2.3.29 A single skeletal branch line, that enters from the east, fans out to create a complicated set of sidings at the western end, upon which a shunter draws carriages backwards and forwards from one shed to another.

2.3.30 The railway line is a key unifying feature of the site as well as a principal means of transporting the works' products and materials. Here the noises and smells are not of abandonment but of industry; various intermittent hammerings, clangs and occasional shouts ring out across this end of the site.

2.3.31 A further unusual and defining feature of the works are the 'traversers' which move carriages between various bays of the sheds in which they are being worked on. Some are still in operational use at the western end whilst only the concrete bases of others survive to the east. The sedate backwards and forwards motion of the traversers when in operation is a memorable sight.

2.3.32 Whilst the buildings here are in much better repair, they retain an uncompromisingly functional quality. The exteriors of the buildings display a wider range of materials, including modern corrugated plastic and metals. Metal lighting and pipe gantries are more frequent features. Despite the modifications the general scale and position of the buildings still convey a strong industrial character and retain much of their early appearance."

8. Management proposals were set out in the Conservation Area review and in particular in respect of changes of use the document provided as follows:

"Change of Use

3.2.6 The council will not normally permit changes of use to a building where the new use would adversely affect the historic character or appearance of the conservation area. For example, the clear distinction between housing, commerce and industrial

> areas is a feature of the conservation area and so a blurring or loss of uses that perpetuate this distinction would normally be resisted. Equally, each character area has its own distinctive quality derived from scale, materials, layout and use. The retention of existing uses contributes to the character, quality, interest and individuality of these areas. These qualities have been recognised, are highly valued, and will be given careful consideration before a change of use is permitted."

9. It was against the background of these documents setting out the historic significance of the Conservation Area, and in particular the site which fell within it, that the application which is the subject of these proceedings came to be considered.

The application

10. On 6th August 2015 the interested party applied for outline planning permission for the development of the site. The development was described in the following terms:

> "Demolition of all existing structures (except part of the lifting shop building and the brick wall on Stratford Road which are partially demolished) and development to create a new employment floorspace (use classes B1/B2/B8), up to 375 residential units (Use class C3), a new foodstore (use class A1), a new community facility (use class D1 or D2) new hard and soft landscaping, open space and public realm, amended site vehicular access including alterations to junctions and pavements"

11. On 12th October 2015 the claimant objected to the application on the basis of its impact upon the historic built environment. Subsequently the defendant commissioned independent consultants to undertake a Heritage Assessment of the site. The Heritage Assessment was published by the defendant in December 2015. The Heritage Assessment examined the historical evolution of the site and focused in particular on the significance of the buildings remaining on the site. It was noted in the report that none of the remaining buildings on the site were listed (a matter which is returned to below). Following this analysis the Heritage Assessment noted a number of buildings which made a positive contribution to the character or appearance of the Conservation Area on the site. These included railway sheds and other historic built elements which positively contributed to the character and appearance of the Conservation Area. Beyond that the Heritage Assessment identified that the site was significant for the following reasons:

> "Beyond that designation, this chapter has shown that the Site is significant for the following reasons.
>
> - Communal value: as the reason for the historic development of Wolverton, the town's most important employer and a major part of its local identity.
>
> - Historical value: as the oldest continuously operated railway works in the world, and as a site that exemplifies the large scale, architectural standardisation and associated workers settlements of the consolidation and completion periods of the English railway network

in general, and as the Carriage Works of the London and North Western Railway in particular.

- Aesthetic value: its historic railway sheds are substantial structures that, although almost all are to a standardised and functional design, exist together with the spaces between them to create a consistent and impressive historic character.

- Evidential value: as an operational railway works, with historic buildings that are generally instructive of their continued use, underlined by specific historical uses where associated machinery and infrastructure survives.

- Setting: for its visual spatial and historic relationship with the wider town, most notably the contemporary residential settlement and the listed railway buildings that now form part of the Wolverton Park development.

- Comparative assessment: as one of the three major English carriage works at the 1923 grouping, as one of the two that survives close to its extent in 1923, and as the only one that does so in close proximity to surviving listed early railway works buildings."

12. The Heritage Assessment drew these threads together in a section entitled "Conservation Issues and Policies". In addressing the issues related to the site as a whole the Heritage Assessment noted that the site was presently too large for the operational requirements of a railway works and that there was a desire for redevelopment of the site. It noted that having recognised that there were buildings which were positive contributors to the character or appearance of the Conservation Area, it stated that the first guiding principle should be to retain those positively contributing buildings preferably in a railway works use. It noted that it might not be viable to retain all of those buildings and therefore the focus should be on "preserving and restoring representative groups of historic buildings with their associated spaces and infrastructure". It concluded that the design of any new buildings should begin from the prompt of the common architectural features currently present on the site. The buildings which positively contributed to the Conservation Area were noted as being the Smiths Shop and Joiners Shop; Saw Mill and Timber Shed together with the Wagon building and repairs shop associated building and the boiler house. Finally, the Heritage Assessment identified Conservation policies which should be pursued and specified them in the following terns:

"4.5 Conservation Policies

P1: Where possible the buildings on the Site that are positive contributors to the character or appearance of Wolverton Conservation Area should be retained

P2: It is desirable to retain railway works on the Site

P3: If it is not possible to retain the buildings on the Site that are positive contributors to Wolverton Conservation Area in railway works use, a feasibility study should be commissioned to explore appropriate alternative uses

> P4: Any future development of the Site must be shown to preserve or enhance the particular contribution of the Works to the character or appearance of Wolverton Conservation Area"

13. At around the same time as the Heritage Assessment was being published the claimant gave consideration to whether or not any or all of the buildings on the site met the criteria to justify them being statutorily listed. The claimant's decision noted that the context of the consideration of whether or not any or all of the buildings should be listed was the discussions for a mixed use redevelopment of the site involving the demolition of all existing structures with the exception of the lifting shop building and the brick wall on Stratford Road. Having examined the qualities of the building against the background of the historic development of the site the conclusion which the claimant reached on 17th December 2015 was that none of the buildings met the criteria for statutory listing.

14. Following these events the interested party produced amendments to their outline application for planning permission. The application had been accompanied by an environmental statement pursuant to the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and amendments were made in accordance with the revisions to the application to the environmental statement. The revisions were published for consultation in August 2016. In particular the revisions to the scheme altered the amount of demolition which was envisaged as part of the proposals. The parameters plan demonstrating demolition illustrated the retention of the eastern and western gable ends of two of the buildings, together with the eastern gable end of a further building. In addition, the lengthy brick wall adjacent to the Stratford Road and the southern edge of the site was also to be retained. The design proposals illustrated that these structures were to be retained as part of public open spaces within the site. The demolition plan also illustrated that apart from the retention of these gables and the existing boundary wall, all of the other built form within the site would be demolished as part of the proposals to facilitate the redevelopment.

15. In support of the proposals the interested party commissioned a report from consultants to examine the impact on the significance of the built heritage on the site and in particular the impact on the Conservation Area. The consultants expressed their conclusions in relation to the effects of the proposal in the following terms:

> "The railway-related buildings on the Site are relatively poor in terms of their aesthetic interest, and hold only a communal interest as part of the larger area that comprised the railway industry of Wolverton. Therefore, the removal of identified railway-related buildings on the Site would not be considered to cause material harm to the overall Wolverton Conservation Area as the communal interest of the town's railway heritage has already been safeguarded by the conversion and preservation of the Wolverton Park development. Nonetheless, the relocation of historic fabric such as that found within the Boiler House that could be reused for public display would not only enhance the Site, but also better reveal the significance of Wolverton's railway industry.
>
> Notwithstanding this, the revised proposals by Purcell seek to retain significantly more building fabric and the overall character and appearance of the site. This is achieved through

> the retention of key building facades, which in combination with other features, such as transverses, will provide public spaces that evoke the essence of the site's railway heritage.
>
> As the mechanisms would not be required when railway operations are scaled back, their removal can be considered acceptable in heritage terms, although a method of interpretation to inform future users, visitors and owners of their operational importance is a potential measure to secure their removal.
>
> In terms of the high, brick perimeter wall which fronts onto Stratford Road, it is considered that this element of the Site makes a noticeable contribution to the Conservation Area; representing a physical barrier between the site's railway maintenance operations and the residential and commercial areas of the town. As much of the land within the Site is to scale back its railway operations and re-used for new residential and employment opportunities, removal of certain sections of this boundary wall is considered acceptable in heritage terms to ensure permeability into the Site is achieved and effectively integrate the new development with the existing townscape.
>
> To conclude, it is our opinion that the Site's contribution to the significance of the Conservation Area is primarily limited to its communal interest."

16. On 17th October 2016 the claimant objected to the revised scheme. The claimant expressed the view that the extensive demolition involved in the proposals would entail substantial harm to the significance of the Conservation Area which was not justified, leading to the conclusion that the proposals should be refused. The extent of public benefits involved in the proposal were questioned as being unclear. The defendant's own Conservation and Archaeology Manager expressed views which were similar to those of the claimant in that he concluded that substantial harm would be caused to the significance of the Conservation Area and that the justification for causing that harm had not been made out.

17. There then followed a sequence of attempts to secure a decision on the application from the defendant's Development Control Committee. On 17th November 2016 the application was reported to the members of that committee with a recommendation for approval which they accepted. Subsequently the claimant pointed out a number of errors in the report, asking for the application to be returned to the committee for a reconsideration. Ultimately the application was reported back to the committee on 3rd August 2017 and at that meeting officers recommended that the earlier decision of the committee be rescinded and a further decision taken.

18. In fact the concerns of the claimant continued. In particular on 2nd August 2017 the claimant's Planning Director South East Dr Andrew Brown wrote to complain about what he characterised as "a completely new argument" in the revised report to committee. In his representation Dr Brown characterises the argument and his concerns in relation to it in the following terms:

> "We remain very concerned at the approach you are now taking to the exercise of your statutory duty towards Conservation Areas under the 1990 Act. Most worryingly, the Committee paper raises a completely new argument which has profound implications for heritage policy in relation to Conservation Areas. It argues that, notwithstanding the evidence of a character appraisal adopted by the Council in 2009 and in a recent heritage assessment commissioned by the landowner, the use of the land for railway carriage manufacturing is the main contributor to the heritage significance of the Conservation Area – more so than the buildings and spaces which give the land the 'special architectural and historic interest' for which it was designated in the first place.
>
> We consider this approach to be a profound misunderstanding of heritage policy as set out in the NPPF and the PPG. If this approach were to be adopted elsewhere, the government's stated aim of 'conserving heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations' (NPPF Para 17) would acquire a completely new interpretation from that conventionally applied. Historic warehousing in Manchester, for example, could be replaced by new self-storage sheds because they preserve the bulk storage use of the land. Well-preserved streets of Georgian housing in key historic cities such as Bath could be replaced by new housing because that perpetuates the residential land use. We do advise, in our publications on significance, that the way a heritage asset is used can sometimes add to its heritage significance – for example a historic blacksmith's workshop is much more easily understood and appreciated if smithing is still carried out. Your Council's argument in this case, however, goes far beyond any advice that Historic England has given on the ascription of significance"

19. Unfortunately the claimant's email was not reported to the members of the committee. The committee went on to accept the recommendation contained in the report that the application should be approved. Following the defendant asking once more for the views of the claimant (which were provided on 21st August 2017) the defendant accepted that the matter should, once again, be reported back to committee. This occurred on 25th September 2017, and as part and parcel of that exercise members were asked to, and did, rescind the resolution from the meeting in August. They were presented with a committee report which addressed the issues pertaining to the application and incorporated the views which had been expressed both by the claimant and also by their own internal heritage advisor. For the purposes of the claimant's judicial review the relevant part of the committee report is that pertaining to the impact on the historic built environment and in particular the impact on the Conservation Area. To do justice to the claimant's case and to the detail of the officers' analysis it is necessary to quote the committee report at some length. The report set out the duty under section 72 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to "the desirability of preserving or enhancing the character or appearance of" a Conservation Area. Reference was made to the relevant provisions of the National Planning Policy Framework ("The Framework") which are set out below.

20. Having cited the claimant's and the defendant's Conservation and Archaeology Manager's views in relation to the historical significance of the site the officers went on to explain their own views in respect of historical significance, the impact on that significance of the proposals, the necessity for demolition and the appropriate resolution of the planning merits in so far as they related to the historic built environment in the following terms:

> "7.3.18 It is noted that the buildings on the site of themselves to date have been considered by Historic England as not meeting the criteria for statutory listing. Historic England recently decided not to list the buildings and in doing so concluded, *although clearly of strong local interest for the history of the town which grew as result of the Works, and of importance to the character of the Conservation Area, the buildings do not meet the criteria for listing.*
>
> 7.3.19 Every heritage asset, and the factors which contribute to its significance, will be different. On the specific factors of the present site, the existence of the buildings forms but a part of the importance of the site to the significance of the conservation area and it is the continued rail related use that ties Wolverton and the conservation area to the reason for its existence (i.e. the railway works) and it is this continued use that comprises the main contribution the site makes to the conservation area's significance. Officers are aware of studies which indicate that the buildings on the site have value. However, in the exercise of their judgment, Officers consider that it is of greater importance to maintain the historical use of the site for railway purposes than to retain non-listed buildings. The site has adapted as needed over time…
>
> 7.3.21 The original application proposed demolition of all of the buildings on the Site. This was not acceptable, and the Applicant has provided amended proposals which would provide for retention of a number of historic façades. Officers consider the amended proposals to be a considerable improvement in terms of reducing the harm to the character and appearance of the Conservation Area. The residential part of the scheme proposes the demolition of the majority of railway buildings on the site, with selected gables, a façade and other existing railway features being retained. It is nevertheless acknowledged that this would have an impact on the heritage significance of the site and Wolverton Conservation Area, albeit to a lesser extent than the original proposals.
>
> 7.3.22 Both Historic England and the Council's Conservation and Archaeology Manager have stated that the scale of demolition proposed, even accounting for recent amendments, would leave no complete building standing on the site with all of the historic works buildings on the site being completely or substantially demolished. They therefore conclude that the impact of this degree of demolition would be to cause substantial harm to the significance of the Wolverton Conservation Area. On this basis it is concluded that the

proposed redevelopment of the site would cause substantial harm, such that paragraph 133 of the NPPF is engaged.

7.3.23 Paragraph 133 requires that the harm/loss must be necessary in order to realise the public benefits and this requires further consideration of whether the benefits could reasonably be achieved in another way which would cause less harm/reduced loss. Paragraph 133, set out in full, provides:

7.3.24 *'Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:*

the nature of the heritage asset prevents all reasonable uses of the site; and

no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and

conservation by grant-funding or some form of charitable or public ownership is demonstrably not possibly; and

the harm or loss is outweighed by the benefit of bringing the site back into use…

7.3.26 The overall area of the site that is occupied by the railway works is too large for a modern rail business and several buildings are beyond their operational lives with areas of the site comprising derelict or near derelict buildings.

7.3.27 The beneficial use of the site is sprawled around unusable buildings and the existing rail layout does not allow direct access into some of the buildings as manoeuvring is not possible. On this basis, KB [the current operators of the railway works] suffers from an inefficient and compromised site; vehicles have to be excessively shunted around the site which adds significant time and therefore cost to regular operations…

7.3.29 Activity is currently largely concentrated within the existing buildings in the western area of the site and the buildings still occupied by KB throughout the site require considerable on-going maintenance to ensure their safety and to create as best a working environment as possible. The buildings present some fundamental challenges to modern railway-related operations including the existing building heights which prevent the use of more modern cranes to lift carriages from bogies; the fact that entire rakes of trains cannot currently be driven into existing buildings due to their orientation; insufficient height of buildings for double height offices which reduces efficiency; and inadequate interiors to enable effective movement of carriages as a result of columns and track layout

and floors are no longer flat and require replacement for modern calibration expectations. Many of the buildings on the Site are in a poor structural condition. Officers have considered whether there is evidence of deliberate neglect, such that Paragraph 130 of the NPPF requires that the deteriorated state of the heritage asset be disregarded. Applying the test in the Planning Practice Guidance, Officers are not satisfied that there is evidence that the site has been deliberately neglected in the hope of making permission or consent easier to gain.

7.3.30 By comparison with the current situation at the site, the site's competitors have modern facilities offering lower operating costs, meaning the site's competiveness is significantly compromised.

7.30.31 For these reasons, if the current rail-related occupier ceased occupation of the site, the likelihood of another rail related business coming forward to acquire the whole site and to use any of the existing buildings is remote. Historic England have accepted that the site is in need of redevelopment. Officers conclude that it is likely that if the site is not redeveloped, with the potential for the railway use to be modernised, then the use of the site for railway purposes would be lost. Given the historical significance of the maintenance of railway usage, the loss of such a use would cause considerable harm to the Conservation Area…

7.3.36 In light of the above comments the choice for the site moving forward is either:

7.3.37 i. **Scenario 1** - Retain the rail related use by allowing demolition of the existing buildings.

7.3.38 The loss of the buildings to make way for the reconfiguration of the rail related business and the loss of the remaining buildings would cause substantial harm but Officers are satisfied that this is necessary because

7.3.39 a. It is the only way rail related use will be retained on the site;

7.3.40 b. It will deliver the benefits that flow from that scheme as follows:

7.3.41

- Full use made of previously developed land in a sustainable location to meet future needs for employment, residential, retail and community needs;

- Co-location of uses with a likelihood of interrelationship e.g. residents using the employment, retail and community facilities, employees using the retail and community facilities, shoppers using the

community facilities and those using the community facilities using the retail facilities;

- Meets housing demand on a site which reduces pressure for greenfield site release;

- Meets affordable housing needs;

- The provision of new modern employment buildings offering modern and flexible accommodation to meet the needs of KB over the lifetime of the buildings;

- The retention of rail related employment in Wolverton whilst providing an opportunity for expansion in the future in response to demands;

- Floor space to support small and medium sized business to promote a mix of employment, and the locally economy;

- The provision of a heritage centre to support local tourism;

- An enhancement to the retailing offer to support the vibrancy of the town centre;

- Enhancing expenditure, contributing to the local economy through an increase in residential and employment population;

- The provision of diverse employment opportunities;

- The provision of new high quality public realm and open spaces with a minimum of 14,000 sqm of new open space created within the site which will be accessible to the wider community;

- An enhancement of nature conservation/biodiversity on the site;

- The creation of public access to the site and surroundings and the provision of a heritage interpretation strategy through the public realm, thus enhancing the residual heritage value of the site as an all-inclusive reference to the past;

- Accommodating the war memorial within the masterplan;

- Improving the town's accessibility and relationship with the Grand Union Canal; and

- A full remediation of the site in regards to contaminated land

7.3.42 ii. **Scenario 2** - Retain the buildings (which did not justify listing) but lose the rail related use, which is the aspect of the site that contributes most to the significance of the CA as a heritage asset.

7.3.43 It is expected that if the buildings were to be retained then the most likely scenario would be the loss of the rail related business in the near future given the clear messages being presented by the current occupier KB. As set out above, St Modwen, as the applicant, discussed alternative commercial uses for the buildings however it was agreed that town centre uses would not be supported in the western area given the policy objection as an out of centre location, and that it was unlikely that any B Class uses would generate sufficient value (given prevailing market circumstances) to support the conversion and reuse of the buildings. This view of the commercial market for Wolverton is supported by the Council's development plan evidence base (Employment Land Review and Economic Growth Study, November 2015). In this context the Viability Assessment prepared by the applicant focussed on higher value residential uses for potential reuse of the buildings.

7.3.44 Loss of the rail related use will result in the loss of a key element of the significance of the heritage asset. However, the design, form and condition of these buildings, and the market advice received validates that it is unlikely that a viable alternative user will be found. As such, ultimately, the loss of the rail related use is likely to result in the loss of the buildings themselves.

7.3.45 Therefore, Scenario 2 would not deliver the package of benefits outlined in Paragraph 7.3.31. Accordingly Scenario 2 would result in greater harm to the significance of the heritage asset and would not deliver the same degree of public interest benefits and this would not accord with the principles of paragraph 133 of the NPPF.

7.3.46 Alternative Proposals

7.3.47 There are two main means by which alternative proposals can be relevant to assessment of the acceptability of a scheme which causes harm in heritage terms:

i. An alternative site on which the benefits could be delivered;

ii. Provision of the benefits on the same site, without the harm to heritage assets.

7.3.48 Officers are satisfied that there is neither such alternative.

7.3.49 In terms of i), it is noted that there is no other single site that could deliver the same benefits, particularly the retention

of the rail related use. Even if there were sites across which the uses could be disaggregated where they would deliver the same benefits, the High Court has recently rejected the contention that it was necessary to consider the disaggregation of uses in respect of a large mixed use development when considering alternatives (**Smech v Runnymede BC**, [2015] EWHC 823 (Admin)). Furthermore, Officers consider that the key in heritage terms is maintaining a railway use *on this site*. This would plainly be impossible on any other site.

7.3.50 In relation to ii), Officers are satisfied that there is no other alternative form of development which would cause less harm in heritage terms. The design of the amended proposals is sensitive to the character and appearance of the Conservation Area. As stated above, Officers have formed the judgment that the most important matter in heritage terms is the maintenance of the use of the site for railway use. Officers are satisfied that this is possible only if the existing buildings are demolished.

7.3.51 The only conclusion therefore is that there is no other means of delivering the same benefits. This means that there is no other means of delivering the same benefits with less harm/loss to the significance of the conservation area.

7.3.52 ***Impact***

7.3.53 Though largely hidden from the public's view, the railway works form an important part of the Conservation Area. However, it is noted that the Conservation Area extends far beyond the boundary of the Works to include a substantial area of housing. It is considered that the communal value of the site is one of the most important elements of the railway works and this communal value can be appreciated through the retention of a railway related use on a part of the site, as proposed, and through the retention of elements of the existing built form and in the form and design of the new scheme, as proposed. It is considered that the communal value of the site can be maintained without necessarily retaining all buildings on the site.

7.3.54 The part elevations to Buildings 1, 4 and 5 (carriage lifting shop, timber store, paint shed) are proposed to be retained, which when combined with the boundary wall, will equate to approximately 370 metres of facade retention. This is a significant increase compared to the originally submitted scheme, and a major improvement on it. These three buildings are considered to represent an interesting part of the built heritage on the site, with a limited amount of modern alteration and extension. They are also located within the centre of the proposed residential area, and therefore, will provide a focal point for the retention of the heritage interest as well as providing a framework upon which the proposed new buildings will be designed and developed. They also provide the enclosure and backdrop to new public areas which, in

combination with the incorporation of rail tracks and traversers, will provide a strong historical reference to the railway works which is considered to be a benefit. The proposal provides the opportunity to better reveal the significance of the Conservation Area, with improved public access and interpretation measures…

7.3.56 On the facts of this particular application, the continuation of rail related use on the site is a very important consideration and one that should carry significant weight. All of the matters above contribute to a substantial public benefit that would be created by the proposed development. It is acknowledged that harm would be caused to the identified heritage asset but, even giving great weight to the conservation of the Conservation Area, and giving considerable importance and weight to heritage harm, it is considered the harm is outweighed by public benefits.

7.3.57 In concluding on these matters it is considered that Scenario 1 outlined above would give rise to a lesser degree of harm/loss to the significance of the conservation area than Scenario 2. Further Scenario 1 would deliver significant benefits in the public interest but Scenario 2 would not. Thus in policy terms Scenario 1 is to be preferred.

7.3.58 Thus, whilst both of the choices would result in harm to the significance of the conservation area, there is a clear and convincing justification for granting planning permission since this would result in less harm to the significance of the conservation area and would deliver far greater benefit.

7.3.59 The harm to the conservation area is acknowledged but this will be offset to some extent by the railway works use being retained when otherwise it would be lost and the harm by reason of the loss of the buildings is necessary in order to achieve substantial public benefits. Even when it is given great weight, the substantial harm to the significance of the conservation area is considered to be outweighed by the substantial and significant public interest benefits that would arise if planning permission were granted by the proposed development. The harm is considered to be necessary in order to achieve the identified public benefits which, it is considered, could not be reasonably achieved in another way. This accords with the requirement set out in paragraph 133 of the NPPF."

21. The report concluded with a recommendation to grant conditional planning permission together with a section 106 obligation in the following terms:

"7.16.2 Law and policy emphasises the importance of safeguarding the heritage assets. The historical railway use of the site and its commercial long-term future is of central importance. This requires new purpose-built structures and modern facilities which will be consolidated in the eastern part

of the site resulting in a more efficient use of the site ensuring the long term retention of employment use.

7.16.3 The proposal has been the subject of much assessment and review in terms of its impact upon the significance of identified heritage assets, including the provision of a Heritage Statement and a Built Heritage Assessment. These assessments have, along with previous consultation responses and input from Historic England, substantially amended the scheme. The proposal has been the subject of a major design review, including the retention of existing structures or parts thereof, a far more contextual design, and the integration of numerous historical references. The buildings and the planned linear form of the site is representative of its function, collectively and individually, and the nature of the industry…

7.16.5 Notwithstanding the positive aspects outlined above it is fully acknowledged that harm would be caused by the proposed development as set out in section 7.3 of this report. This weighs heavily against the application.

7.16.6 On balance, even once it is given great weight the substantial harm to the significance of the conservation area is considered to be outweighed by the substantial and significant public interest benefits that would arise if planning permission were granted by the proposed development.

7.16.7 The most significant benefit would be securing railway use of the site by the provision of new modern employment buildings offering modern and flexible accommodation to meet the needs of business over the lifetime of the buildings; the retention of rail related employment in Wolverton whilst providing an opportunity for expansion in the future in response to demands. Other benefits are set out in more detail in paragraph 7.3.31 above but include: the addition of floorspace to support small and medium sized business to promote a mix of employment, and the local economy; the provision of a mix of quality new homes in a sustainable and accessible location in Wolverton in order to meet an identified housing shortfall; the provision of a new community facility; an enhancement to the retailing offer to support the vibrancy of the town centre; the creation of greater public access to the site and the provision of a heritage interpretation strategy through the public realm, thus enhancing the residual heritage value of the site as an all-inclusive reference to the past. The identified benefits are considered to support the application in terms of its assessment against the social, environmental and economic threads of sustainable development as outlined by the NPPF and thus tip the balance in favour of a recommendation to approve the application

7.16.8 There is a measure of conflict with the development plan. Under the framework of section 38(6) of the Planning and Compulsory Purchase Act 2004, there are material

considerations which indicate that planning permission should nevertheless be granted. Section 38(6) does not override the statutory heritage duties under sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Those sections have been applied in the above analysis and they do not indicate that planning permission should be refused.

7.16.9 Arguments that the application is premature or lacking in detail would not justify a refusal of the application given that it has been concluded that the harm would not outweigh the benefits of the proposed development. Sufficient detail has been provided for the application to be considered, and it should be approved. It is recommended that outline planning permission is granted subject to the completion of a s106 for the items identified in paragraph 7.15.4 and subject to the conditions set out in section 8 of this report."

22. In addition to the committee report, there was an update paper prescribing further representations objecting to the planning application including from the Ancient Monuments Society, Save Britain's Heritage and the Victorian Society all objecting on the same basis as the claimant. Oral representations on the part of objectors were made, including an oral presentation by Dr Brown. A presentation was made by the officers to the committee. The minutes of the meeting then record as follows in relation to the adoption of a resolution that planning permission subject to conditions under section 106 obligations should be granted:

> "Councillor Eastman moved that the recommendation to grant outline planning permission subject to a s106 legal agreement to secure the planning obligations and the planning conditions as detailed in the committee report. This was seconded by Councillor Legg.
>
> Members of the Committee recognised the concerns raised by objectors but accepted that the issues had been addressed in the committee report and that the decision whether to grant the application was a subjective matter to be decided on weighing the public benefits against the harm to the heritage assets and whether that was substantial enough to justify that decision to grant, taking into consideration the necessity to demolish buildings to the extent that had been proposed..
>
> Some members did not accept that there was adequate evidence to suggest that there was a need to demolish the existing buildings rather than retain the structures and use them as an integral part of the redevelopment, rather than simply retaining the gable ends. There was also comment that the provision of only 12% affordable housing rather than the council's policy of 30% did not in the view of some members of the Committee amount to a 'substantial' public benefit.
>
> Other members recognised the recent refusal of Historic England to 'list' the existing buildings and suggested that the loss of buildings would not, in their opinion, amount to substantial harm to the conservation area.

> On being put to the vote, the motion to approve the application was carried with 6 members of the committee voting in favour and 4 members of the committee voting against.
>
> RESOLVED –
>
> That the application be granted subject to the conditions set out in Section 8 of the Committee report and a s106 agreement."

23. Subsequent to this on 20th December 2017 conditional planning permission was granted.

The judicial review

24. Proceedings for judicial review were commenced on 31st January 2018. Five Grounds of challenge to the grant of planning permission were raised. On 23rd March 2018 Holgate J considered the question of whether or not permission should be granted on the papers and granted permission solely in relation to Ground 2. He formed the view that the other 4 Grounds advanced were unarguable. Ground 2 is the contention that the officer's report had misunderstood the statutory purpose of the Conservation Area in asserting that the rail use of the site was the main contribution the site made to the Conservation Area and as such the conclusion reached in the officer's report was irrational and unlawful.

25. On 4th April 2018 the claimant served a notice of renewal seeking to orally renew the application for permission in respect of Ground 1. As anticipated by the terms of Holgate J's order, this application for permission was effectively listed alongside the substantive hearing in respect of Ground 2 and is properly to be treated as a rolled up hearing in respect of Ground 1. Ground 1 is the contention that the defendant had unlawfully failed to produce a statement containing the main reasons for the decision together with other information contrary to regulation 24(1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. The detail of the 2011 Regulations and the breaches alleged are set out below.

26. Prior to the substantive hearing of this matter the claimant filed at court an amended Statement of Facts and Grounds in which an additional ground, which became characterised at the hearing as Ground 3, is raised. It may be that this ground was prompted by certain observations made by Holgate J in granting permission in relation to Ground 2. Through the claimant's skeleton argument permission is sought to amend the Statement of Facts and Grounds and, on the basis that permission to amend is granted, a rolled up hearing is sought in relation to that ground. Ground 3 is in substance the contention that the committee report failed to have regard for the reasons for the designation of the Conservation Area and irrationally concluded that the rail use of the site was its main contribution to the character and appearance of the Conservation Area. In the light of both the original designation and its identification of significance and the subsequent Conservation Area review this conclusion was one which was irrational.

27. Having set out those grounds upon which the judicial review proceeded at the hearing the remainder of this judgment is devoted to setting out the relevant law in respect of those grounds and then an explanation of the submissions made in respect of those grounds and the conclusions which have been reached.

The Law

28. The discretion as to whether or not to grant planning permission is governed by the provisions of section 70 of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004. There are additional statutory provisions governing both procedural aspects and substantive dimensions of the statutory discretion to authorise development by the grant of planning permission. Two such statutory provisions are engaged in the present case.

29. Firstly, as set out above, it was accepted that the development proposed by the interested party is "EIA development" within the meaning of the 2011 Regulations. The 2011 Regulations therefore applied to the development and brought with them a number of procedural requirements in respect of the provision of information. Amongst those was the duty under Regulation 24 of the 2011 Regulations to inform the public and the Secretary of State of final decisions in relation to an application for "EIA development". Regulation 24, so far as material to the arguments raised by the claimant provides as follows:

> "Duties to inform the public and the Secretary of State of final decisions
>
> 24.—(1) Where an EIA application is determined by a local planning authority, the authority shall— …
>
> (b)inform the public of the decision, by local advertisement, or by such other means as are reasonable in the circumstances; and
>
> (c)make available for public inspection at the place where the appropriate register (or relevant section of that register) is kept a statement containing—
>
> (i)the content of the decision and any conditions attached to it;
>
> (ii)the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public;
>
> (iii)a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development; and
>
> (iv)information regarding the right to challenge the validity of the decision and the procedures for doing so."

30. In support of his submissions in relation to the importance of reasons when they are legally required, and the remedies to be deployed by the court when reasons are not provided or inadequate, Mr Harwood places reliance upon the case of R (on the application of Richardson and another) v North Yorkshire County Council and others [2003] EWCA Civ 1860; [2004] 1 WLR 1920. That case concerned the grant of planning permission for a quarry which was development subject to a predecessor of the 2011 Regulations. It was accepted before the court that there had been a failure to comply with the equivalent predecessor of Regulation 24. The notice of decision in respect of the grant of planning permission did not contain a statement of the main reasons on which the decision was based and therefore there had been a breach of the

duty to provide reasons for the grant of permission for "EIA development". At first instance Richards J (as he then was) had concluded that the failure could be properly addressed through the granting of a mandatory order requiring the authority to make available a statement at the required place containing the information specified in the Regulation. He expressed himself in relation to that conclusion in the following terms:

> "49. As to that, the first and most important point in the present case is that regulation 21(1) looks to the position *after* the grant of planning permission. It is concerned with making information available to the public as to what has been decided and why it has been decided, rather than laying down requirements for the decision-making process itself. It implements the obligation in article 9(1) of the Directive to make information available to the public 'When a decision to grant… development consent *has been taken*' (emphasis added). That is to be contrasted with article 2(1) of the Directive, which lays down requirements as to what must be done *before* the grant of planning permission (which may be granted only after a prior assessment of significant environmental effects).
>
> "50. The fact that the requirement focuses on the availability of information for public inspection after the decision has been made, rather than on the decision-making process, leads me to the view that a breach of regulation 21(1) ought not to lead necessarily to the quashing of the decision itself. A breach should be capable in principle of being remedied, and the legislative purpose achieved, by a mandatory order requiring the authority to make available a statement at the place, and containing the information, specified in the regulation."

This reasoning was adopted by Simon Brown LJ giving the lead judgment in the Court of Appeal. He also adopted the same conclusions expressing himself in the following terms:

> "39 Mr McCracken submits that an irresistible inference arises from the requirement to give reasons following an EIA decision that at the time the decision is taken those reasons must be openly discussed and formulated in public. Whenever there is a legislative requirement for reasons, he argues, there are necessarily twin objects to be served. One is to enable those aggrieved by the decision to challenge it if its reasoning can be seen to be deficient. The other is to improve the quality of decision-making. Often, of course, that will be so. But to contend that it is invariably so seems to me extravagant: the requirement for "the main reasons and considerations on which the decision is based" to be made available to the public-after, it should be noted, the decision "has been taken"-was first introduced by the amending Directive 97/11/EC in 1997. To suggest that there then suddenly arose a duty upon planning committees to discuss their detailed reasoning in public I find absurd. As Mr Straker points out, an EIA planning application can on occasion be decided by a council officer under his delegated powers when, of course, there would be no public

hearing at all. In any event it seems to me plain that the particular requirement for reasons imposed upon planning authorities here was to inform the public retrospectively of the basis for the decision rather than to dictate the course or even quality of the decision making process itself."

31. Mr Harwood also drew attention to the case of R (on the application of Wall) v Brighton and Hove City Council [2004] EWHC 2582 (Admin); [2005] 1 P&CR 33. That was a case concerning the grant of planning permission and the failure of the local planning authority to provide, as was then required, that the notice granting planning permission included "a summary of their reasons for the grant and a summary of the policies and proposals in the development plan which are relevant to the decision". In that case Sullivan J distinguished the case of Richardson on the basis that it was concerned with what happened after the grant of planning permission whereas the duty under Article 22 was, he considered, to "ensure that the members decide in public session why they wish to grant planning permission". He provided the following reasons as to the approach which he took that case which led to his conclusion that the decision should be quashed:

> "58 The new requirement to give summary reasons for the grant of permission will be particularly valuable in cases where members have not accepted officers' advice, where the officer has felt unable to make a recommendation, where the officer's report fails to take account of a material consideration, but that omission is said to have been remedied by the members during the course of their discussions, or where an irrelevant factor has been relied upon by some members during the course of their discussions and it is important to ascertain whether it was one of the Committee's reasons for granting planning permission. In such cases—and I emphasise that these are merely examples—there would have to be very powerful reasons for not quashing a decision notice which did not include the local planning authority's summary reasons for granting planning permission…
>
> 68 If there has been a failure to include summary reasons for granting planning permission in a decision notice, and the omission has occurred because the Committee has failed to agree upon the summary reasons for its decision, and the local planning authority wishes to make good that omission, then the proper course would seem to me to be for the officers to take the matter back to committee at the earliest possible opportunity so that the Committee can decide, in public session whilst members' recollection is still fresh, what were its summary reasons for granting planning permission. It must be borne in mind that those reasons might well have been informed by the views of those who were against the grant of planning permission, as well as those who voted in favour. Adopting such a procedure would not necessarily persuade the court that a defective notice granting planning permission should not be quashed, but the fact that a local planning authority had adopted such a procedure would be a factor to take into account in the exercise of the court's discretion, since in practical terms the local planning authority would have

> undertaken the same exercise that it would have to undertake if the decision notice was quashed, although it would not have been free to change its mind and refuse planning permission.
>
> 69 Standing back from the detail, Parliament intended that the defendant should set out its summary reasons for granting planning permission in the decision notice. This is not a case of summary reasons being inadequate because, for example, the planning authority has failed to mention a particular reason or reasons. No reasons at all were given. While it is true that the claimant cannot point to any specific prejudice having been caused by the defendant's omission, neither can the defendant or any interested party point to any particular prejudice if the decision notice is quashed and the Committee has to reconsider the matter. The defendant's case really amounts to no more than a submission that it should not be put to the administrative inconvenience of having to reconsider the application, but if the Committee's reasons are to be elicited after the event that should have been done by taking the matter back to the Committee and by the Committee discussing and resolving upon summary reasons in public session. Whether they do so following the quashing of a decision notice or as a means of trying to save a defective notice would seem to make little practical difference in terms of administrative burden, save that in the former case the members would retain the option of refusing planning permission on reconsideration."

32. Recent consideration has been given to the application of Regulation 24 of the 2011 Regulations by the Supreme Court in the case of R (on the application of CPRE Kent) v Dover District Council [2017] UKSC 79; [2018] 1 WLR 108. The case concerned an application for planning permission which was recommended by the planning officer for approval subject to amendments including a substantial reduction in the scale and density of the residential proposal. Whilst the recommendation to grant planning permission was accepted, the committee did not endorse the substantial reductions in the scale contemplated by the planning officer. A challenge was brought on the basis that adequate reasons had not been provided for the decision to grant the application. In the course of his judgment Lord Carnwath (with whom the other members of the Supreme Court all agreed) noted that the duty to give a summary of the local planning authority's reasons which had been play in the case of Wall had been repealed. He noted as follows:

> "29 This duty was repealed as from 25 June 2013: Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2013 (SI 2013/1238), article 7 . The Explanatory Memorandum (paras 7.17–7.20) indicated that this was a response to suggestions that the duty had become "burdensome and unnecessary", and having regard to the fact that officer reports "typically provide far more detail on the logic and reasoning behind a particular decision than a decision notice", so that the requirement to provide a summary "adds little to the transparency or the quality of the decision-taking process"; and also having regard to the "greater level of transparency in the decision-taking process", resulting from

increased ease of access to information, both on-line and through the Freedom of Information Act 2000 ."

33. In relation to the standard of reasons Lord Carnwath observed as follows:

> "41…Where there is a legal requirement to give reasons, what is needed is an adequate explanation of the ultimate decision. The content of that duty should not in principle turn on differences in the procedures by which it is arrived at. Local planning authorities are under an unqualified statutory duty to give reasons for refusing permission. There is no reason in principle why the duty to give reasons for grant of permission should become any more onerous.
>
> 42 There is of course the important difference that, as Sullivan J pointed out in *Siraj* , the decision-letter of the Secretary of State or a planning inspector is designed as a stand-alone document setting out all the relevant background material and policies, before reaching a reasoned conclusion. In the case of a decision of the local planning authority that function will normally be performed by the planning officers' report. If their recommendation is accepted by the members, no further reasons may be needed. Even if it is not accepted, it may normally be enough for the committee's statement of reasons to be limited to the points of difference. However the essence of the duty remains the same, as does the issue for the court: that is, in the words of Bingham MR in the *Clarke Homes*, case whether the information so provided by the authority leaves room for "genuine doubt … as to what (it) has decided and why"."

34. He then went on to consider the question of remedies in the event of a breach of the duty. He set out the reasoning from paragraphs 49 and 50 of Richards J's judgment at first instance in the case of Richardson which was adopted by Simon Brown LJ in the Court of Appeal. Lord Carnwath was unwilling to follow the reasoning which the judges had deployed. He went on to express his conclusions in this connection in the following terms:

> "48 With respect to the judges concerned, I would decline to follow that reasoning. I find the distinction drawn between notification of the decision, and of the reasons on which it is based, artificial and unconvincing. In the Regulations (as in the Aarhus Convention, which is now expressly referred to in the Directive) the provision of reasons is an intrinsic part of the procedure, essential to ensure effective public participation. I would not necessarily disagree with the court's disposal of the appeal in Richardson. Although the committee had not given its own reasons, it had granted permission in accordance with the recommendation in the officer's report, and could be taken to have adopted its reasoning. Simon Brown LJ (para 35) referred with approval to the comment of Sullivan J (*R v Mendip District Council, Ex p Fabre* (Practice Note) [2017] PTSR 1112,1121) that in such a case— "the reasonable inference is

> that the members did so for the reasons advanced by the officer, unless of course there is some indication to the contrary."
>
> 49 It is perhaps also relevant that the court was faced with a somewhat extreme submission (based on observations of Lord Hoffmann in *Berkeley v Secretary of State for the Environment* [2001] 2 AC 603, 616–617), that in respect of a breach of an EU Directive the court had no choice in the matter; it was:
>
> "simply not permitted to regard a breach of the implementing regulations as curable other than by the outright quashing of the development permission granted." (Para 38.)
>
> Not surprisingly the court found that an unattractive proposition. However, it is now clear, following recent judgments of this court, that even in respect of a breach of an EU Directive the powers of the court are not so restricted:
>
> "the court retains a discretion to refuse relief if the applicant has been able in practice to enjoy the rights conferred by European legislation, and there has been no substantial prejudice": per Lord Carnwath JSC, *R (Champion) v North Norfolk District Council* [2015] 1 WLR 3710, para 54, following *Walton v Scottish Ministers* [2013] PTSR 51 , paras 139, 155.
>
> In *Champion* itself it was held that this test was met: given that the environmental issues were of no particular complexity or novelty; there was only one issue of substance on which each of the statutory agencies had satisfied itself of the effectiveness of the proposed measures; the public had been fully involved; and Mr Champion himself having been given the opportunity to raise any specific points of concern but having been unable to do so (para 60)."

35. Against the background of these legal principles Lord Carnwath's decision in respect of the particular decision before the court was that not only had the duty to give reasons been breached (indeed so much was uncontroversial), but that the nature and quality of the breach was such that the only appropriate remedy was to quash the permission.

36. As will be set out below the central submission of the defendant and the interested party is that in the present case, in that the members accepted the officer's recommendation, it can be concluded in a manner akin to paragraph 48 of Lord Carnwath's judgment in CPRE that the members adopted the reasoning contained in the committee report. This is disputed by Mr Harwood on the basis that the minutes of the meeting themselves refer to members taking the view that the loss of the buildings involved in the development proposal "would not, in their opinion, amount to substantial harm to the Conservation Area", which was different reasoning from that which had been provided in the committee report.

37. In addition to paragraph 48 of Lord Carnwath's judgment in the CPRE case and the authority of R v Mendip District Council ex parte Fabre [2000] 80 P & CR 500, the defendant and the first interested party draw attention to the generality of other

authorities such as R (Siraj) v Kirklees MBC [2011] JPL 571 and Mansell v Tonbridge and Malling BC [2018] JPL 176 (as to which see further below) in which courts have regularly approached the substantive merits of challenges by examining officer's reports to see whether they contain material errors of law where those reports have been the basis for a grant of planning permission. Further in R (Palmer) v Herefordshire Council [2017] 1 WLR 411 at paragraph 7 Lewison LJ observed that:

> "It is a reasonable inference that, in the absence of contrary evidence, [the members] accepted the reasoning of an officer's report, at all events where they followed the officer's recommendation."

38. In addition to these principles the defendant and interested party, in response to the claimant's contentions with respect to the minutes, draw attention to the fact that the planning committee, here as elsewhere, proceeded to reach its decision by means of the adoption of a resolution. Thus, the decision which is under challenge is that of the members in committee as a whole, and taken on a collective basis, since they act through such a resolution. Mr Mills and Mr Taylor draw attention to authorities pointing out the difficulties of seeking to rely upon individual speeches, or the minuting of individual member's observations, in order to give rise to the contention that the decision is infected by an error of law. In particular attention was drawn firstly to the case of R v London County Council ex parte London and Provincial Electric Theatres Limited [1915] 2 KB 466 in which Pickford LJ observed as follows:

> "I see no evidence that the Council acted upon any but a perfectly proper ground. With regard to the speeches of the members which have been referred to, I should imagine that probably hardly any decision of a body like the London County Council dealing with these matters could stand if every statement which a member made in debate were to be taken as a ground of the decision. I should think that there are probably few debates in which some one does not suggest as a ground for decision something which is not a proper ground; and to say that, because somebody in debate has put forward an improper ground, the decision ought to be set aside as being founded on that particular ground is wrong."

Secondly, they referred to the decision of Schiemann J in R v Poole Borough Council ex parte Beebee in which he observed as follows:

> "Mr Ryan QC, who appeared for the applicants, was faced with an unmotivated decision, unexceptionable on its face. He did not allege bad faith or corruption or that the decision was on its face so wildly surprising that one's instinctive reaction would be that something must have gone wrong. No. He took me instead on a trawl of a considerable amount of predecision documentation, from letters written to an objector by an officer in the planning department via the report prepared by an assistant planning officer, upon which that officer elaborated in committee to various affidavits setting out who said what in committee. There is undoubted precedent for carrying out this sort of exercise without protest by the court, and indeed at times the courts have criticised authorities for not filing affidavits. So I criticise no one for having embarked on this

> exercise. If it is going to be done at all, it would be difficult for it to be done more expeditiously or elegantly than Mr Ryan did it.
>
> However, for my part, I have grave reservations about the usefulness of this sort of exercise when there is no allegation of bad faith. These reservations, in part, arise out of the theoretical difficulties of establishing the reasoning process of a corporate body which acts by resolution. All one knows is that at the second that the resolution was passed the majority were prepared to vote for it. Even in the case of an individual who expressly gave his reasons in council half an hour before, he may well have changed them because of what was said subsequently in debate. It is that type of consideration, coupled with the fact that many of those who vote on a resolution may give no utterance in debate, which has led our courts not to permit references to Parliamentary debates when arguing about the meaning of a statute."

Thus it is contended that the exercise which Mr Harwood has embarked upon of seeking to scrutinise the minutes in the way in which he has is illegitimate and cannot displace the reality of the committee acting through a resolution which itself reflected the acceptance of the officer's report.

39. The second element of statutory provisions relevant to the discretion to grant planning permission which is relied upon in this case by the claimant is the duty under section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 which is operational when a local planning authority is considering an application affecting a Conservation Area. Section 72 of the 1990 Act provides as follows:

> "72 General duty as respects conservation areas in exercise of planning functions.
>
> (1)In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

40. As noted above Mr Harwood relies upon a breach of this duty in the approach taken by the officers in their report in respect of the railway works use as compared with the buildings which historically accommodated it and which made a positive contribution to the Conservation Area. In the course of his submissions he drew attention to the case of R v Canterbury City Council ex parte Halford [1992] 64 P&CR 513. In that case it was noted that it was perfectly legitimate for land which formed the setting for the buildings and areas of special architectural or historic interest to be included within the designation of a Conservation Area. He also relied upon the case of R v Surrey County Council ex parte Oakimber Limited [1995] 70 P&CR 649. In that case Tucker J accepted that it could be appropriate in drawing the boundary for a Conservation Area for the area to range wider than simply being confined to those parts of the area with specific historic interest.

41. It will be noted that in relation to Grounds 2 and 3 that submissions are made as to alleged errors of law contained within the officer's report. The correct approach to

challenges to a decision based upon an officer's report have been aptly summarised by Lindblom LJ in Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314; [2018] JPL 176 at paragraph 42 of his judgment:

> "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:
>
> •The essential principles are as stated by the Court of Appeal in *R. v Selby DC Ex p. Oxton Farms [1997] E.G.C.S. 60* (see, in particular, the judgment of Judge LJ, as he then was). They have since been confirmed several times by this court, notably by Sullivan LJ in *R. (on the application of Siraj) v Kirklees MBC [2010] EWCA Civ 1286* at [19], and applied in many cases at first instance (see, for example, the judgment of Hickinbottom J, as he then was, in *R. (on the application of Zurich Assurance Ltd, t/a Threadneedle Property Investments) v North Lincolnshire Council [2012] EWHC 3708 (Admin)* at [15]).
>
> •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 in *R. (on the application of Morge) v Hampshire CC [2011] UKSC 2* at [36], and the judgment of Sullivan J, as he then was, in *R. v Mendip DC Ex p. Fabre [2017] P.T.S.R. 1112; (2000) 80 P. & C.R. 500* at 509). 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. (on the application of Palmer) v Herefordshire Council [2016] EWCA Civ 1061* at [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.
>
> •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. (on the application of Loader) v Rother DC [2016] EWCA Civ 795; [2017] J.P.L. 25*), or has plainly

misdirected the members as to the meaning of a relevant policy (see, for example, *R. (on the application of Watermead Parish Council) v Aylesbury Vale DC [2017] EWCA Civ 152*). 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. (on the application of Williams) v Powys CC [2017] EWCA Civ 427; [2017] J.P.L. 1236*). But unless there is some distinct and material defect in the officer's advice, the court will not interfere."

42. Lastly, arguments were made on all sides in relation to the question of discretion were the court to be satisfied that there had been an error of law. This being an application for judicial review the provisions of section 31(2A) of the Senior Courts Act 1981 are in point. That provision provides as follows:

> "31.— Application for judicial review…
>
> (2A) The High Court—
>
> (a) must refuse to grant relief on an application for judicial review, and
>
> (b) may not make an award under subsection (4) on such an application,
>
> if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.
>
> (2B) The court may disregard the requirements in subsection (2A)(a) and (b) if it considers that it is appropriate to do so for reasons of exceptional public interest.
>
> (2C) If the court grants relief or makes an award in reliance on subsection (2B), the court must certify that the condition in subsection (2B) is satisfied."

43. Furthermore, and in particular in relation to the contentions with respect to Regulation 24 of the 2011 Regulations, reliance was placed by the defendant and interested party on the case of R (on the application of Champion) v North Norfolk District Council [2015] UKSC 52; [2015] 1 WLR 3710. It will be recalled that there was a cross-reference to this authority in the extract from Lord Carnwath's judgment in CPRE set out above. In greater detail the conclusions of Lord Carnwath in respect of the exercise of discretion in the case of Champion, including how it should be exercised upon particular facts of that case, were set out by him in the following terms:

> "54 Having found a legal defect in the procedure leading to the grant of permission, it is necessary to consider the consequences in terms of any remedy. Following the decision of this court in *Walton v Scottish Ministers [2013] PTSR 51* , it is clear that, even where a breach of the EIA Regulations is established, the court retains a discretion to refuse relief if the applicant has been able in practice to enjoy the rights conferred

by European legislation, and there has been no substantial prejudice: para 139 per Lord Carnwath JSC, para 155 per Lord Hope of Craighead DPSC.

55 Those statements need now to be read in the light of the subsequent judgment of the CJEU in *Gemeinde Altrip v Land Rheinland-Pfalz (Vertreter des Bundesinteresses beim Bundesverwaltungsgericht intervening) (Case C-72/12) [2014] PTSR 311* . That concerned a challenge to proposals for a flood retention scheme, on the grounds of irregularities in the assessment under the EIA Directive . A question arose under article 10a of the Directive 85/337/EEC (article 11 of the 2011 EIA Directive), which requires provision for those having a sufficient interest to have access to a court to challenge the "substantive or procedural" legality of decisions under the Directive. One question, as reformulated by the court (para 39), was whether article 10a was to be interpreted as precluding decisions of national courts that make the admissibility of actions subject to conditions requiring the person bringing the action

"to prove that the procedural defect invoked is such that, in the light of the circumstances of the case, there is a possibility that the contested decision would have been different were it not for the defect and that a substantive legal position is affected thereby."

56 In answering that question, the court reaffirmed the well-established principle that, while it is for each member state to lay down the detailed procedural rules governing such actions, those rules, at para 45:

"in accordance with the principle of equivalence, must not be less favourable than those governing similar domestic actions and, in accordance with the principle of effectiveness, must not make it in practice impossible or excessively difficult to exercise rights conferred by Union law …"

Since one of the objectives of the Directive was to put in place procedural guarantees to ensure better public information and participation in relation to projects likely to have a significant effect on the environment, rights of access to the courts must extend to procedural defects: para 48.

57 The judgment continued:

"49. Nevertheless, it is unarguable that not every procedural defect will necessarily have consequences that can possibly affect the purport of such a decision and it cannot, therefore, be considered to impair the rights of the party pleading it. In that case, it does not appear that the objective of Directive 85/337 of giving the public concerned wide access to justice would be compromised if, under the law of a member state, an applicant relying on a defect of that kind had to be regarded as not having

had his rights impaired and, consequently, as not having standing to challenge that decision.

"50. In that regard, it should be borne in mind that article 10a of that Directive leaves the member states significant discretion to determine what constitutes impairment of a right …

"51. In those circumstances, it could be permissible for national law not to recognise impairment of a right within the meaning of sub-paragraph (b) of article 10a of that Directive if it is established that it is conceivable, in view of the circumstances of the case, that the contested decision would not have been different without the procedural defect invoked.

"52. It appears, however, with regard to the national law applicable in the case in the main proceedings, that it is in general incumbent on the applicant, in order to establish impairment of a right, to prove that the circumstances of the case make it conceivable that the contested decision would have been different without the procedural defect invoked. That shifting of the burden of proof onto the person bringing the action, for the application of the condition of causality, is capable of making the exercise of the rights conferred on that person by Directive 85/337 excessively difficult, especially having regard to the complexity of the procedures in question and the technical nature of environmental impact assessments.

"53. Therefore, the new requirements thus arising under article 10a of that Directive mean that impairment of a right cannot be excluded unless, in the light of the condition of causality, the court of law or body covered by that article is in a position to take the view, without in any way making the burden of proof fall on the applicant, but by relying, where appropriate, on the evidence provided by the developer or the competent authorities and, more generally, on the case file documents submitted to that court or body, that the contested decision would not have been different without the procedural defect invoked by that applicant.

"54. In the making of that assessment, it is for the court of law or body concerned to take into account, inter alia, the seriousness of the defect invoked and to ascertain, in particular, whether that defect has deprived the public concerned of one of the guarantees introduced with a view to allowing that public to have access to information and to be empowered to participate in decision-making in accordance with the objectives of Directive 85/337."

58 Allowing for the differences in the issues raised by the national law in that case (including the issue of burden of proof), I find nothing in this passage inconsistent with the approach of this court in the Walton case. It leaves it open to the court to take the view, by relying "on the evidence provided by the developer or the competent authorities and, more

generally, on the case file documents submitted to that court" that the contested decision "would not have been different without the procedural defect invoked by that applicant". In making that assessment it should take account of "the seriousness of the defect invoked" and the extent to which it has deprived the public concerned of the guarantees designed to allow access to information and participation in decision-making in accordance with the objectives of the EIA Directive.

59 Judged by those tests I have no doubt that we should exercise our discretion to refuse relief in this case. In para 52 of its judgment, the Court of Appeal summarised the factors which in its view entitled the authority to conclude that applying the appropriate tests, and taking into account the agreed mitigation measures, the proposal would not have significant effects on the SAC. That, admittedly, was in the context of its consideration whether the committee arrived at a "rational and reasonable conclusion", rather than the exercise of discretion. However, there is nothing to suggest that the decision would have been different had the investigations and consultations over the preceding year taken place within the framework of the EIA Regulations.

60 This was not a case where the environmental issues were of particular complexity or novelty. There was only one issue of substance: how to achieve adequate hydrological separation between the activities on the site and the river. It is a striking feature of the process that each of the statutory agencies involved was at pains to form its own view of the effectiveness of the proposed measures, and that final agreement was only achieved after a number of revisions. It is also clear from the final report that the public were fully involved in the process and their views were taken into account. It is notable also that Mr Champion himself, having been given the opportunity to raise any specific points of concern not covered by Natural England before the final decision, was unable to do so. That remains the case. That is not to put the burden of proof on to him, but rather to highlight the absence of anything of substance to set against the mass of material going the other way.

61 For completeness I should mention that, in his written submissions to this court, Mr Buxton attempted to rely on a witness statement which had been prepared for the High Court in support of an additional ground relating to failure to consider cumulative effects of "incremental development" at the site over many years. This he suggests can be used as "evidence … that it is at least possible that … lawful screening might produce a different substantive result". However, as he accepts, this ground, and the evidence in support, were not admitted in the High Court. This court can only proceed on the evidence properly before it."

Submissions and Conclusions

44. Under Ground 1 the claimant contends that there has been a failure by the defendant to comply with the duty under Regulation 24(1)(c) of the 2011 Regulations. There is no dispute but that there was a need to comply with Regulation 24(1)(c) of the 2011 Regulations since it was accepted on all side that this application was for "EIA Development". The particular focus of Mr Harwood's submissions on behalf of the claimant was that there was a failure to comply with Regulation 24(1)(c)(ii), which requires that "the main reasons and considerations on which the decision is based" should be set out in the notice following the grant of permission, and Regulation 24(1)(c)(iv) which requires the statement to contain "information regarding the right to challenge the validity of the decision and the procedures for doing so". It was accepted during the course of argument by Mr Mills on behalf of the defendant that there had been a technical breach of Regulation 24(1)(c)(iv) as none of the documentation contained any information in relation to the right of a disappointed objector to bring a claim for judicial review set out.

45. In relation to the competing contentions under Regulation 24(1)(c)(ii) there are two stages to the argument. The first stage is the submission by Mr Harwood that there has simply not been any statement produced by the defendant which addresses the requirement of Regulation 24(1)(c)(ii). Thus, he contended in the absence of any such statement the decision should be quashed on the basis that the defendant has not complied with this statutory duty and it was now not capable of doing so. The response by the defendant and the interested party to this submission was based on reliance upon the observations of Lord Carnwath in paragraph 48 of CPRE, in which he observed that in the Richardson case, whilst the committee had not given its own reasons, "it had granted permission in accordance with the recommendation in the officer's report, and could be taken to have adopted its reasoning" unless there is good evidence to establish that they have not. Thus, in the present case Mr Mills, on behalf of the defendant, and Mr Taylor, on behalf of the interested party, contend that the reasons contained in the officer's report provide substantial compliance with the requirements of Regulation 24. The effect of the decision of the Supreme Court in CPRE was that where a committee agreed with the recommendation of the officer's report and they adopt the reasoning in the officer's report the duty to give reasons under Regulation 24(1)(c)(ii) would have been effectively discharged. In any event, even were there some technical breach of the 2011 Regulations, in the light of the detail contained in the officer's report relied upon by the members the observations of Lord Carnwath in Champion would pertain, and this would not be an appropriate case for the court to exercise its discretion to quash on the basis that were there to be found to be any legal defect in the procedure the contested decision would not have been any different.

46. The second stage of the argument arises from the claimant's contention that it is not open to the defendant to rely upon what was said by Lord Carnwath in paragraph 48 of CPRE on the basis that the matters recorded in the minutes, and attributed to some members, were inconsistent with the contents of the committee report. In particular "other members" were noted as suggesting "that the loss of buildings would not, in their opinion, amount to substantial harm to the Conservation Area". That observation was contrary to the views expressed by the officer's in their report where they concluded that the harm to the Conservation Area would be substantial. Thus, it is contended that it is not open to the defendant or the interested party to rely on the officer's report as a statement of the reasons for the member's decision given that it appears from the minutes that members differed from their officers' views.

47. In response to this submission Mr Mills, on behalf of the defendant, supported by Mr Taylor on behalf of the interested party, relies upon the decisions set out above of ex parte London and Provincial Theatres Limited and ex parte Beebee. They submit that, firstly, the committee proceeded by resolution, and therefore the decision under challenge must be approached as being made as a collective decision. Secondly, they argue that it is inappropriate to pick over the contributions made to the committee debate or the minutes in the manner undertaken by Mr Harwood in the present case given that such an approach had been deprecated in the authorities cited above.

48. In drawing together conclusions in relation to Ground 1, I propose to focus upon the contentions in respect of Regulation 24(1)(c)(ii). It is important not to lose sight of the conceded breach of Regulation 24(1)(c)(iv) and I shall return to that issue below. On its face Mr Harwood's first contention is that there has simply been a bald failure to produce the necessary notice required by Regulation 24(1)(c)(ii), which must inexorably lead to the decision being quashed. In the light of the observations of Lord Carnwath in CPRE at paragraph 48, in my view the failure to produce a separate piece of paper entitled a statement to satisfy the requirements of Regulation 24 is not an end to the consideration of whether or not there has been a breach of the requirements of Regulation 24. The matter is not open and shut in that sense. As Lord Carnwath observed in paragraphs 48-9 in CPRE, if members have resolved to grant planning permission in accordance with a recommendation in an officer's report that is capable of amounting to the claimant enjoying in practice the rights conferred by the European legislation without any substantial prejudice.

49. Whilst Mr Harwood pointed out the importance of the discipline of being required to give reasons as part of the decision-making process, that objective would be met in cases where members adopt the reasoning in the officer's report. The reasoning set out in the officer's report will be part and parcel of the decision-making process, and thus the important discipline of requiring reasons so as to ensure that the decision-maker understands and follows through with rigour a structured and well considered decision-making process will have been achieved. The provision of reasons will have been an intrinsic or integral part of the decision-making procedure if those reasons are the officer's reasons, and they are adopted by members in reaching their decision. It appears to me, therefore, that the question is whether or not it is proper to conclude that members did not adopt the reasons of the officers in reaching their decision to endorse the officers' recommendation. That must start with examining whether the exercise which the claimant encourages, namely embarking upon an enquiry into the observations in the committee debate to try to establish the reasons of individual members for supporting the resolution, is one which is appropriate.

50. In reaching a conclusion in relation to this issue it is important in my judgment to appreciate that, as emphasised by the defendant and interested party, the committee reaches a collective decision undertaken by means of a resolution. What that means in practice is that the individual members of the committee determine whether they propose to support the resolution as to whether or not planning permission should be granted (and if so subject to what conditions or obligations), or refuse it. Individual members may have their own particular reasons for choosing to vote for or against a resolution (which may or may not be articulated) but firstly, it is the terms of the resolution which they are voting to support in a collective decision which is their decision and therefore the focus of the court's enquiry. Secondly, and consequentially, little useful purpose is going to be served by a forensic enquiry into the particular reasons why individual members may have voted in a particular way. I share the "grave reservations" of Schiemann J (as he then was) in ex parte Beebee in relation to the utility or purpose of an enquiry into the individual reasons which members may

have for supporting a resolution absent allegations of bad faith. As Schiemann J observed, there are difficulties in establishing on a proper footing the reasoning process of a corporate body which acts by resolution, other than by scrutinising the resolution which was in fact passed.

51. As a matter of principle therefore I do not consider that it is consistent with authority, or an appropriate approach to practical decision making in this area, to endorse the analysis of the claimant seeking to enquire into the individual reasons of members for supporting a recommendation, whatever may have been noted as comments by an unidentified number of them during the debate. This is not an appropriate enquiry in circumstances where the only issue before the committee is whether at the time of voting they are willing to support the resolution before them or not. As set out above there is consistent authority deprecating such an approach.

52. It is material to note that what members were voting on was a resolution to support "the recommendation to grant outline planning permission subject to a section 106 legal agreement to secure the planning obligations and the planning conditions as detailed in the committee report". Whatever may have been noted as to observations passed by "other members" during the debate, the resolution to support the recommendation in the officer's report was not amended. It would, of course, have been open to members to amend the recommendation to suggest alternative reasons for supporting the grant of planning permission which differed from those provided by the officers, but they did not do so. It follows that I am not satisfied that there is a proper basis to depart from the normal approach to collective decision-making by a planning committee in this case, namely that the committee having proceeded to make its decision by resolution and to have endorsed the officer's recommendation to grant planning permission they took as their reasons for doing so the reasons which had been provided by the officers.

53. In the light of those conclusions I am satisfied that in respect of Regulation 24(1)(c)(ii) that reasons for the decision, together with details of public participation in the decision-making process, were provided in the form of the officer's report supporting the recommendation that planning permission should be granted. Thus, the claimant was able in practice to enjoy the rights conferred by Regulation 24(1)(c)(ii) and no prejudice arose. In the circumstances therefore, there is no basis upon which relief could be granted.

54. Turning to the accepted breach of Regulation 24(1)(c)(iv), I am entirely satisfied that relief in the form of quashing the decision ought not to be granted applying the approach set out by Lord Carnwath in paragraph 58 of Champion. The information which was not provided by the defendant in any form, and which gives rise to the breach of Regulation 24(1)(c)(iv), is information regarding the right to challenge the validity of the defendant's decision and the procedures to do so. It is self-evident that the substance of the defendant's decision would not have been any different if this information had been provided in a notice since it is purely procedural. Furthermore, it cannot be contended that there is any conceivable prejudice to the claimant by this failure since they had the benefit of legal advice throughout, and knew and understood how to bring the challenge which is the subject matter of this judgment. Thus, whilst there was undoubtedly a breach of this legislative requirement, it is not a breach which in the circumstances of this case could give rise to the grant of relief in the form of a quashing order.

55. Having scrutinised the issues raised at the hearing in relation to Ground 1, I have formed the view that whilst the claimant's case was arguable it must nonetheless be

dismissed on the merits.

56. It is convenient to address the claimant's Grounds 2 and 3 together. They relate essentially to the same subject matter or topic, but are separate dimensions of a concern in relation to the defendant's approach to the historic built environment. Whilst there are other parts of the committee report which are referred in this connection and which make the same point, to the focus of the claimant's complaint is aptly captured by the observation in paragraph 7.3.19 of the committee report where it is noted that:

> "officers consider that it is of greater importance to maintain the historical use of the site for railway purposes than to retain non-listed buildings."

57. As has been observed, and as is clear from the committee report, this approach, that in the circumstances of the case greater importance should be attached to the significance of the historical use of the site for railway purposes than the retention of the buildings making a positive contribution to the Conservation Area, underpins the approach taken to the interests of the historic built environment. This analysis is attacked by Mr Harwood on behalf of the claimant in three distinct ways. Firstly, he submits that this judgment does not properly reflect the true construction of section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 set out above. That section in its turn is designed to give effect to the reasons for designating a Conservation Area set out in section 69 of the 1990 Act which provides that a Conservation Area is to be designated solely because it is "of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance". His submission is that it is wholly inconsistent with that statutory purpose underlying section 69 of the 1990 Act, and the statutory duty under section 72 of the 1990 Act, for the defendant to have concluded that retention of a historic use of the site could preserve or enhance the character or appearance of the area when accompanied by demolition of all of the historic (albeit non-listed) buildings in the Conservation Area or the part of it under consideration.

58. The second way in which Mr Harwood attacks this analysis is to contend that it was irrational for the officers to conclude that the preservation of the historic use of the site for railway purposes could be afforded greater importance than the retention of the non-listed buildings. He submits that any historic use would of necessity be parasitic upon the historic buildings which had housed it, and thus only the buildings could properly have priority in any rational analysis of the impact upon the historic built environment. The incorporation of this approach by the officers necessarily downgraded the scale of the impact on the historic significance of the Conservation Area and drove them to a judgment on the issues associated with the historic built environment which was irrational.

59. The third form of attack on the analysis forms the subject matter of Ground 3. Under this ground Mr Harwood contends on behalf of the claimant that when the designation documents, comprising the original identification of the special interest of the area by the Council in 2001 and the Conservation Area Review of 2009 are examined and properly understood the officers could not have rationally concluded that the historical use of the site for railway purposes should be regarded as of greater importance than the preservation of the non-listed buildings. He submitted that the clear thrust of the Conservation Area documents were that the buildings were the source of the identification of historic interest and significance, and therefore the preservation of the buildings had, in any rational approach to the application, to be

afforded greater importance than the preservation of any historic use. Put another way, it could not be a rational judgment in relation to the planning application in the light of the contents of the designation documents for the officers to have afforded greater weight to the preservation of the railway use over the preservation of the buildings making a positive contribution to the Conservation Area.

60. Prior to evaluating these submissions, it is important in my judgment to make two factual observations firstly, in relation to the nature of the detail of the application which was before the defendant and, secondly, in relation to the broader evaluation of potential alternative scenarios which was undertaken by the officers in the committee report. Firstly, in relation to the content of the application, whilst the claimant has both in its written case and oral argument characterised the application as being the preservation of the use and "the total loss of architectural and historic interest of the buildings", and an application where the buildings "have been entirely destroyed" (see paragraph 93 of the claimant's skeleton argument) that does not necessarily present a full understanding of the nature of the application. As has been pointed out above, as part and parcel of the revised application the eastern and western Gable ends of two of the buildings together with the eastern gable of a further building were identified to be retained within the public open space provision of the proposed development. There was not, therefore, a complete loss of all historic built fabric as part of the proposal and, albeit vestigial, parts of the historic fabric of the buildings were retained and their future secured. Whilst, therefore, the buildings were lost as a complete entity parts of the historic built form were preserved as part of the overall scheme. The merits of the retention of these built elements was carefully evaluated by the officers in paragraph 7.3.54 of the committee report set out above.

61. Secondly, in relation to the evaluation of alternative scenarios within the committee report, it will have been noted that in applying paragraph 133 of the Framework the officers relied upon examining a demonstration of whether "the substantial harm or loss [to the Conservation Area] is necessary to achieve substantial public benefits that outweigh that harm or loss". Two scenarios were examined which depended upon factual evaluations and judgment as to, for instance, whether retaining the buildings would lead to them being viably reused. Based on the matters referred to in paragraphs 7.3.43-7.3.45 of the committee report the officers concluded that, on the evidence available to them, if the buildings were retained not only would the railway use cease, but also those buildings would not find a viable end use leading to the likely loss of the buildings in the absence of them having a beneficial use to sustain them. These were all factual evaluations reached in order to establish whether or not the test in paragraph 133 of the Framework had been met and which are not, quite properly, the subject of challenge in these proceedings. The evaluation of these scenarios and the conclusions as to the alternative futures they represented were not necessarily contingent upon any conclusions about the extent of the harm to the Conservation Area.

62. Having set out those short factual issues, the first point which arises for consideration is whether or not the analysis relied upon by the officers that greater importance should be ascribed to the preservation of the historical use of the site for railway purposes, in comparison to retaining the non-listed buildings, was consistent with the test set out in section 72 of the 1990 Act. The starting point for consideration of this issue is what is meant by paying special attention to "the desirability of preserving or enhancing the character or appearance" of the Conservation Area. The first matter to be observed, albeit obvious, is that this requires a judgment (informed by an understanding of the significance of the historic asset represented by the Conservation Area) of the effect of the proposal on its "character or appearance". The issue which

then arises is as to the role of a historic use of a Conservation Area, or part of it, within that judgment.

63. In my view it is clear that the phrase "character or appearance" is not confined simply to the historic built fabric of the area. Whilst undoubtedly that historic built fabric will be integral to the "appearance" of the area, it is important to note that the statutory test is quite deliberately not confined to simply visual matters. The inclusion of the area's "character" clearly broadens the range of qualities which can be relevant to the evaluative judgment, and in my view plainly incorporates within the test matters such as historic uses and the contributions which they make to the character of the area by influencing the understanding of that area and reflecting experiences that are not simply visual.

64. The further question which then arises is as to whether or not there is any warrant from the statutory language for concluding that built fabric is to be regarded as of paramount importance, or is pre-eminent over, other dimensions of the historic interest of the area such as the uses that historically have taken place within it. I can see no warrant within the statutory language for any such approach. What is called for is an evaluative judgment which will incorporate a broad range of historic influences and features bearing upon the character and appearance of the area, and the relative priority which may be given to any of those aspects will depend upon an understanding of the historic interest underlying the designation of the Conservation Area. It is not possible to be definitive as to the range of those matters which could bear upon historic interest. They will be many and various, but will undoubtedly in many cases include within them the uses which have a historic association with the area and which add to its character, not only in terms of the way in which those uses may have influenced the built form or appearance of the area, but also in how they have impacted upon the experience of the area in ways which are other than visual. What is clear from the statutory language is that the judgment needs to be comprehensive, and to include all of those historic aspects of the area which bear upon its value and the appreciation of it. It follows that I am unable to accept the argument made in principle that it is not possible to form a judgment in relation to the duty under section 72 of the 1990 Act which might in particular factual circumstances afford greater significance to the preservation of a use over the preservation of a particular building. The weight to be attached to each of the relevant historic dimensions or ingredients of the judgment is a matter which section 72 clearly leaves to the decision-maker in each individual case.

65. The question which then arises is as to whether or not in this case the analysis that the preservation of the use should be afforded greater significance than the retention of the non-listed buildings was an approach which was rationally available to the officers. It is trite that a claimant seeking to establish that a planning decision-maker has acted irrationally faces an uphill task. I am unable to accept that in the present case the judgment which the officers reached in respect of the evaluation of harm to the Conservation Area was one which was irrational. They noted in paragraph 7.3.19 that the existence of the buildings formed a part, albeit but one part, of the significance of the Conservation Area along with the continued rail related uses that tied Wolverton and the Conservation Area to the reasons for its existence in the first place, namely the presence of the railway which the town grew up to serve. It was a matter for the officers to determine which of these two factors should have the greater weight attached to them. For the reasons which I have already given there is nothing inconsistent with the duty under section 72 of the 1990 Act in them affording greater weight to the retention of the historic railway use.

66. On the facts of this case the evaluation of harm in particular in paragraphs 7.3.19 and 7.3.21 were not irrational and thus the balance which was struck applying paragraph 133 of the Framework was, as a consequence, not irrational. Indeed, as noted above, that conclusion depended on the officers' examination of the alternative futures in the scenarios they considered rather than the question of quite how substantial the harm to the conservation area was (bearing in mind that the fact they concluded it was substantial triggered the policy test under paragraph 133). The relevant elements of the historic interest in the Conservation Area were identified and their significance considered leading to an evaluation of the weight to be attached to those historic elements and, consequentially, the extent of the harm to the character and appearance of the Conservation Area. The analysis included a consideration of the extent of the merits of the retention of the elements of built form proposed, which was as noted above contained in paragraph 7.3.54 of the committee report. The overall judgment reached was one which was faithful to the duty under section 72 of the 1990 Act and led to a conclusion which was one which the defendant could rationally arrive at as to the impact upon the Conservation Area.

67. Turning to the third way in which the claimant puts its case, I am unable to accept that the approach which has been set out above taken by the officers was inconsistent with a proper understanding of the reasons for the designation of the Conservation Area and the identification of its significance both in the 2001 Statement of Significance and in the 2009 Conservation Area Review. Whilst very succinct, it is notable that the 2001 Statement of Significance observed that Wolverton derived historic significance from its attribute "as a critical component of the world's earliest railway development". This relationship between the existence of the town and the presence of the railway and the railway uses which gave rise to its existence were also emphasised in the extracts cited above from the 2009 Conservation Area review. In particular, in the context of the Conservation Area review at paragraphs 2.3.28-2.3.30, the contribution of the railway uses to the extent of activity within the Conservation Area, and the noises and smells redolent of the industrial railway use historically associated with the Conservation Area, are specified. The management proposals within the Conservation Area review incorporated provisions in relation to resisting changes of use which would erode the character or appearance of the Conservation Area.

68. Moving forward to the Heritage Assessment which was undertaken in the context of the application, and was itself informed by those earlier designation documents, the desirability or retaining the railway works on the site was specified by the authors as a part of that document's conservation policies (alongside, it should of course be noted, the retention where possible of the buildings). Thus, I am unable to accept that the approach taken by the officers was irrational as being wholly inconsistent with the designation documentation nor does it seem to me to be fair to suggest that the continued railway use of the site played no part in the special interest of the Conservation Area when those documents are carefully examined. It is clear that the documents recognised that the railway use, which provided a direct link between the town and the rationale for its very existence, was an ingredient in the designation of the Conservation Area.

69. It follows that, in summary, I am not satisfied that the claimant has made out Ground 2 in substance and that element of the claim must fail. It will be recalled that Ground 3 was added by way of an amendment, and whilst I am content to grant permission for the claim to be amended to incorporate it, I do not consider that it adds materially to the contentions under Ground 2. Not without some hesitation I grant permission to

apply for judicial review in relation to Ground 3, but on analysis conclude that the claimant has not demonstrated any illegality in the Council's decision in that respect.

70. For all of the reasons which have been set out above the claimant's application for judicial review on all three Grounds must be dismissed.