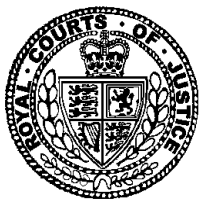

Neutral Citation Number: [2021] EWHC 3007 (Admin)

Case No: CO/1331/2021

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

Cardiff Civil Justice Centre

2 Park Street, Cardiff, CF10 1ET

Date: 11/11/2021

Before :

THE HONOURABLE MRS JUSTICE STEYN DBE

- -

Between :

The QUEEN on the Application of GALLAGHER VENTURES LIMITED **Cla**

- and -

(1) SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL GOVERNMENT

-and- **Defe**

(2) TORBAY COUNCIL

- -

- -

Christopher Boyle QC and Andrew Parkinson (instructed by **Shakespeare Martineau LLP**) for the **Claimant**

Zack Simons (instructed by **Government Legal Department**) for the **First Defendants**

The **Second Defendant** did not appear and was not represented

Hearing date: 6 October 2021

- -

Approved Judgment

Mrs Justice Steyn :

Introduction

1.

This claim concerns an application for a Certificate of Lawfulness of Proposed Use and Development ("CLOPUD") which was made by the claimant, in respect of land at Sladnor Park in Maidencombe, Torquay, and refused by Torbay Council by a decision notice dated 9 June 2020. The claimant's CLOPUD application at the site was for:

"Completion of a 188 unit 'retirement village', associated healthcare, leisure and restaurant facilities, retention of 3 pairs of existing lodges, landscaping and parking pursuant to P/2008/1418/PA and P/2009/0240/MRM."

2.
The claimant appealed to an Inspector appointed by the first defendant ("the CLOPUD appeal"). By a decision letter dated 3rd March 2021 ("the Inspector's decision"), the Inspector dismissed the CLOPUD appeal.

3.
By this claim, brought under section 288 of the 1990 Act, the claimant challenges the Inspector's decision and seeks an order quashing it. The claim turns on the correct interpretation of a planning permission granted on 19 December 2008, ref: P/2008/1418/PA ("the 2008 Permission"). Permission was granted by HHJ David Cooke, by an order sealed on 11 June 2021.

The legal principles

4.
The legal principles to be applied in determining this claim were common ground. First, the proper interpretation of a planning permission is a matter of law for the court: Barnett v Secretary of State for Communities and Local Government[2009] EWCA Civ 476, [2010] 1 P & CR 8, per Keene LJ at [28]. It is not a matter of planning judgement where the court would start by deferring to the decision maker: UBB Waste Essex Ltd v Essex County Council [2019] EWHC 1924 (Admin), per Lieven J at [25].

5.
Secondly, the court must determine whether regard should be had to any material beyond the planning permission itself, applying the approach described by Keene J in R v Ashford Borough Council ex parte Shepway District Council [1999] PLCR 12 at p.19C to 20D, which has frequently been cited with approval since. For the purposes of this case, the relevant principles are:

i)
The general rule is that in construing a planning permission which is clear, unambiguous and valid on its face, regard may only be had to the planning permission itself (including the conditions, if any, on it and the express reasons for those conditions): Ashford, per Keene Jat p.19C-D; R (Menston Action Group) v City of Bradford Metropolitan District Council [2016] EWCA Civ 796, per Lindblom LJ at [11].

ii)
The planning permission may incorporate by reference the application. It will only do so if some words sufficient to inform a reasonable reader that the application forms part of the permission appear in the operative part of the permission, showing that the words govern the description of the development permitted. Any document that is properly to be regarded as incorporated by reference is intrinsic to the planning permission and the court should have regard to it when determining the meaning of the planning permission. See Ashford, per Keene Jat p.19D-G.

iii)
If there is an ambiguity in the wording of the permission, it is permissible to look at extrinsic material to resolve that ambiguity. Extrinsic evidence may be documentary (e.g. the relevant planning officer's report), but it is not confined to documentary evidence: Wood v Secretary of State for Communities and Local Government [2015] EWHC 2368 (Admin), per Lindblom J at [43].

6.
Thirdly, the court should ask itself what a reasonable reader would understand the words to mean when reading the planning permission as a whole. If any documents are incorporated by reference, a holistic view should be taken, having regard to the planning permission and the relevant parts of any intrinsic documents. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the planning purpose, and common sense. See Trump International Golf Club Scotland Ltd v The Scottish Ministers [2015] UKSC 74, [2016] 1 WLR 85, per Lord Hodge at [34], London Borough of Lambeth v Secretary of State for Housing, Communities and Local Government [2019] UKSC 33, [2019] 1 WLR 4317, per Lord Carnwath at [16]-[19], and UBB, per Lieven J at [55].

7.
The reasonable reader will have some knowledge of planning law, and understand the role of the planning permission, conditions and any incorporated documents. If an interpretation flies in the face of the planning purpose or intention of the permission, where this is reflected in the permission and/or intrinsic documents, then common sense may well indicate that that interpretation is not correct. See UBB, per Lieven J at [52] to [53].

8.
Fourthly, even where there is an ambiguity rendering it permissible to have regard to extrinsic material, a relatively cautious approach to reliance on such material - particularly evidence that is not in the public domain - may be warranted, having regard to the context, an aspect of which is that a planning permission is a public document which may be relied on by parties unrelated to those originally involved, and planning conditions may be used to support criminal proceedings: see Trump International, per Lord Carnwath at [65]-[66], LB of Lambeth v SSHCLG, per Lord Carnwath at [18], and UBB, per Lieven J at [56] to [57]. In particular, the court should be extremely slow to determine the planning purpose by reference to documents which are not incorporated, particularly if they are not in the public domain: UBB, per Lieven J at [57].

9.
Fifthly, under the planning regime, a landowner is entitled to make as many applications for planning permission for the development of the same land as they wish, even though the applications may be mutually inconsistent. The planning authority must deal with any such applications made. However, by proceeding with one development, the development authorised in another permission may be rendered incapable of being implemented. For a development to be lawful it must be carried out fully in accordance with any final permission under which it is done, failing which the whole development is unlawful. So if a development for which permission has been granted cannot be completed because of the impact of other operations under another permission, that subsequent development as a whole will be unlawful. See Singh v Secretary of State for Communities and Local Government [2010] EWHC 1621 (Admin), per Hickinbottom J at [14] to [21] (summarising the case-law in Pilkington v Secretary of State for the Environment[1973] 1 WLR 1527, Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment [1985] 1 AC 132 and Sage v Secretary of State for the Environment, Transport and

the Regions[2003] 1 WLR 983); and Hillside Parks Ltd v Snowdonia National Park Authority [2021] EWCA Civ 1410, [2021] JPL 698, per Singh LJ at [58] to [62] and [67].

The planning permissions

10.
On 21 June 2006, the second defendant granted outline planning permission under reference P/2006/0474/MOA ("the 2006 Outline Planning Permission"), for

"**Re-development To Provide 'Retirement Village' (Class C2) Comprising 24 Independent Living Units, 92 Care Suites, 90 Bed Care Unit, Associated Healthcare, Leisure And Restaurant Facilities. Retention of 3 Pairs Of Existing Lodges; Landscaping And Parking**

at Sladnor Park & Associated Land AT; Off Teignmouth Road; Sladnor Park Road; Brim Hill; Rock House Lane; Maidencombe Torquay

to accord with the application received 22 March 2006 and the plans and particulars submitted."

11.
The 2006 Outline Planning Permission is expressed to be subject to standard conditions (a) and (b) and additional conditions 1 to 18. Conditions (a) and (b) provide:

"(a) that, in the case of any reserved matter, application for approval must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission; and

(b) that the development to which this permission relates must be begun not later than two years from the date of the final approval of the reserved matters, or in the case of approval on different dates, the final approval of the last such matter to be approved."

By condition 1, 'reserved matters' were defined as limited to 'external appearance' and 'landscaping'; in other words, they did not encompass layout or access.

12.
On 29 November 2007, the second defendant granted reserved matters approval for part of the 2006 Outline Permission site, reference P/2007/1410/MRM, ("the 2007 Reserved Matters Approval"), approving details relating to the central part of the site and the access road. The 2007 Reserved Matters Approval lists, amongst the approved plans, "OS Map/site location plan PL 12.001 rev C date on plan 10.10.2007" ("the 2007 map"). The 2007 map indicates with a red line an area that is identified as the "reserved matters application area".

13.
On 19 December 2008, the second defendant granted the 2008 Permission which states:

"Torbay Council as Local Planning Authority hereby PERMIT:

Amendments to previous approvals (ref P/2006/0474/MOA and P/2007/1410/MRM) relating to mix of accommodation, elevational treatment and floor space

At Sladnor Park (Off Teignmouth Road/Sladnor Park Road/Brim Hill/Rock House Lane) Maidencombe

to accord with the application received 27 October 2008 and the plans and particulars submitted.

This permission is subject to the following standard condition:

The development to which this application relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.

…

Relevant Plans

The plans listed below are those approved. No substitution should be made without prior consent from the Local Planning Authority.

…"

14.
Under the heading "Relevant Plans", 29 approved plans are listed. These are identified as internal or elevation plans. The approved list does not include a plan showing the boundary of the site of the 2008 Permission. The only condition is the single standard condition quoted above.

15.
The 2008 Permission was granted pursuant to an application dated 22 October 2008 ("the 2008 application"). The 2008 application described the site as "Sladnor Park" and specified the site area as 24.7 hectares. The application described the proposal as:

"Minor alterations to existing consent P2006/0474/MOA and P/2007/1410/MRM relation to mix of accommodation, elevational treatment and floorspace."

16.
Reference was made in section 5 of the form to pre-application advice received from the local authority that the changes sought "require application to amend existing consent". The response given in each of boxes 6, 7, 11, 12, 13, 14, 16, 20, 21 of the application is "no change from consented scheme". In box 18, addressing the question whether the proposal includes the gain, loss or change of residential units, the response given is that the proposal is for "188 units (206 consented)", in class C2 residential, and a manuscript note states "see covering letter".

17.
In box 25, the applicant certifies that notice had been given to "the owner … of any part of the land or building to this application relates", giving details of the owners of Lodge 38 and Lodge 41, and the date on which notices had been served on them.

18.
The covering letter referred to in the application form is a letter dated 22 October 2008 ("the covering letter"). It stated:

"Re: Sladnor Park, Maidencombe, Torquay – Application for amendment to existing Planning Consent Reference P/2006/0474

Further to discussions regarding our proposed alterations to the above consent at Sladnor Park, Torquay, we are pleased to put forward our application to amend the existing consent for your consideration.

As discussed, a number of factors have made it necessary for our Client to reassess the scheme, and we enclose 3 copies of the revised plans and elevations for the main building listed on the attached schedule …We believe these alterations are minor in nature and should meet with your agreement.

As you will note from the attached, we have made a number of alterations to the internal design of the building to better reflect the operational requirements and generally improve efficiency, and this has resulted [in] modifications to the external envelope, and a small increase in floor space. …

In addition to the design changes, we propose a change in mix, which you have informally indicated should be acceptable. …

Based on the above, we confirm that the attached plans provide for the following accommodation:

	Consented	Proposed
Independent Living Units	24 (inc. 10 on lodge site)	24 (inc. 10 on lodge site)
Care Suites	92	117
Care Suites (EMI)	0	17
Care Beds	90	30
TOTAL UNITS	**206**	**188**

…

We are aware that our Reserved Matters application in respect of the site of the existing lodges (which is to provide 10 Independent Living Units) is yet to be submitted, but do not propose to vary from the approved outline consent on this part of the site and which is included in the above figure. To avoid any confusion, however, this application relates to the existing Reserved Matters approval, and we attach plan PL 12.001 Rev A indicating the boundary for this application. …"

19.
The records contain a plan 'PL 12.001/…" on which the typed letter "S" has been struck out and the letter "A" has been written over it in manuscript. It is common ground that the court should proceed on the basis that this plan is the one referred to in the covering letter as "PL 12.001 Rev A" ("PL 12.001/A"). This plan is not included in the list of approved plans on the 2008 Permission. A central area is bounded by a red line, and some buildings are shown outside the red line. The area within the red line is part of the area that was within the red line on the 2007 map. Unlike on the 2007 map, there is no key identifying what the red line represents.

20.
On 29 June 2009, the second defendant granted reserved matters approval on land outside the area of the 2007 Reserved Matters Approval for 'ten independent living units as part of retirement village.'

The CLOPUD application and appeal

21.
In December 2011, construction of part of the access road was undertaken, and observed by officers ("the implementation works"). The implementation works took place on the site of the 2006 Outline Permission, but outside the commencement period set by the 2006 Outline Permission. They took place within the commencement period for the 2008 Permission, and so would be effective to implement that permission if the site of the 2008 permission was the same as the 2006 Outline Permission, but ineffective if the site of the 2008 Permission is limited to the area within the red boundary on PL 12.001/A, as the implementation works were undertaken outside that area.

22.

In the context of pre-application discussions with the claimant in respect of a different planning application on the site, the second defendant queried the extent to which the previous permissions could be taken into account as a ‘fallback’. The second defendant invited the claimant to make an application for a CLOPUD under s.192 of the 1990 Act. The claimant did so on 18 March 2020 (see paragraph 1 above). The second defendant refused the CLOPUD application on the basis that evidence had not been submitted to demonstrate a material operation was undertaken to commence the 2008 Permission and, as a result, the permission has now lapsed. In particular, the second defendant stated that the implementation works were authorised by the 2006 Outline Permission but carried out after that permission had lapsed; and no lawful commencement of development had been carried out with respect to the 2008 Permission.

23.
On 18 August 2020, the claimant appealed the refusal of the CLOPUD application to the first defendant. The CLOPUD appeal was conducted by written representations. By a decision letter dated 3 March 2021 the Inspector dismissed the appeal. The Inspector observed that on its face the 2008 application was “intended to amend the previous approvals (the 2006 outline and the 2007 reserved matters)”. He considered that the description of the proposal, together with the listed plans showing revisions to the development proposal for the centre of the site, pointed to “this being a revision only of the 2007 reserved matters but the extent of the application site is not clear”.

24.
The Inspector observed that the statement in the 2008 application “188 units were being applied for whereas 206 were consented”, is “a reference to the proposal relating to the number of units covered by the 2006 outline” and it “would seem that the site area is a reference to the broader outline site”. The Inspector considered this created an ambiguity. However, while recognising that not all ambiguities were resolved by looking at the application form and covering letter, the Inspector determined that the 2008 Permission related only to the central part of the site covered by the 2007 Reserved Matters Approval and otherwise left the 2006 Outline Permission unaffected.

The parties’ submissions

25.
The parties agree that the 2008 Permission is a free-standing permission granted under s.70 of the 1990 Act; it is not a permission under s.73 of the Act (to develop free of a condition), nor a discharge of reserved matters (whether under the 2006 Outline Permission or the 2007 Reserved Matters Approval).

26.
The claimant’s primary submission is that there is no ambiguity on the face of the 2008 Permission. It does what it purports to do, that is, it grants a new permission for an amended scheme, which is that approved by the 2006 Outline Permission and the 2007 Reserved Matters, as altered by the listed plans. It incorporates, by express reference, not implication, all that development permitted by the 2006 and 2007 permissions, including the accompanying conditions, as amended by the listed plans into one new, free-standing permission.

27.
There is no ambiguity as to the geographical scope of the 2008 Permission created by the lack of an approved site plan: there was no need for one because it was unchanged from the 2006 Outline Permission.

28.
The claimant's written submissions suggested that there was no basis for having regard to the covering letter because there is no ambiguity. However, in his oral submissions, leading Counsel for the claimant, Mr Christopher Boyle QC, acknowledged that the terms of the operative part of the 2008 Permission are such as to incorporate the 2008 application, and the covering letter is incorporated by reference in the 2008 application and so forms part of the intrinsic documents to which the court may have regard, irrespective of whether there is any ambiguity.

29.
The claimant submits that if the covering letter is read as a whole, and together with the 2008 application, it is apparent that PL12.001/A was provided, not as an application site plan, but only as an informative plan to assist the second defendant's officers and members in understanding where the proposed differences between the permitted scheme and the proposed scheme were to be found. Mr Boyle emphasises that the 2008 Permission granted permission for 188 units, and the 2008 application sought permission for 188 units, 10 of which were shown on PL 12.001/A as being outside the red boundary, so the land within the red boundary cannot represent the site that is the subject of the 2008 Permission.

30.
If the court considers it is permissible to consider extraneous documents, the claimant submits regard should then be had to all of the available extrinsic evidence. As it was put by Supperstone J in University of Leicester v SSCLG[2016] JPL 709 at [72]:

"The authorities suggest that when there is an ambiguity, it is permissible to look at the extrinsic evidence, including but not limited to the application form, and indeed including but not limited to documentary evidence. All relevant extrinsic material may be referred to, depending on the circumstances of the individual case."

31.
As the Inspector acknowledged, the evidence showed that the applicant and officers contemporaneously intended the 2008 Permission to achieve, and thought it had achieved, a new permission varying the 2006 scheme and extending the timeframe.

32.
The claimant contends that the Inspector's interpretation of the 2008 Permission flies in the face of common sense because the effect is that the 2008 Permission, which on its face is subject only to one condition, would have granted permission in respect of the majority of the proposed built form on the site free of any controlling conditions as to erection or operation. The Officer's Report recommending approval demonstrates the contemporaneous understanding that the 2008 Permission was a variation of the 2006 scheme and so subject to the earlier conditions. The Officer's Report included an informative stating:

"The amendments hereby agreed are to the approved scheme for a Class C2 Care Village as embodied in P/2006/0474/MPA and P/2007/1410. You are advised that the S106 agreement and conditions pursuant to the above comments apply to the scheme as amended and are required to [be] complied with in full".

33.
In addition, Mr Boyle draws attention to the Officer's description of the site which, he submits, is clearly a description of the whole site, not the small central area.

34.
The claimant submits that if the Inspector's interpretation were correct, the 2008 Permission would have created a circumstance of two inconsistent permissions, namely, the 2006/2007 permission for the whole site, and the differently configured 2008 Permission only for the central part, thereby imperilling the ability to rely on the 2006/2007 permissions to complete the whole.

35.
The first defendant submits the Inspector correctly identified that there was ambiguity on the face of the 2008 Permission as to the extent of the site it related to because the consent did not refer to any plans which fix its geographical scope. He also correctly identified the relationship between the 2008 Permission and the two earlier permissions.

36.
Counsel for the first defendant, Mr Zack Simons, submits that the operative part of the 2008 Permission incorporates by reference "the plans … submitted" which must include PL 12.001/A as that was one of the submitted plans. In any event, as the claimant acknowledged at the hearing, the Inspector was entitled to have regard to the covering letter as it was part of the 2008 application which was itself incorporated in the 2008 Permission. The defendant contends that the covering letter shows unequivocally that the attached plan, which it is accepted is PL 12.001/A, indicates "the boundary for this application".

37.
The Inspector's analysis of the evidence was comprehensive. In cases like this, there will invariably be some evidence which points one way, and other evidence which points another way. The Inspector's task was to evaluate the relevant evidence and reach a balanced judgement. The first defendant submits the Inspector reached a clear, rational conclusion that the most telling piece of evidence against the claimant's case was the covering letter.

38.
The first defendant submits that the claimant's identification of what it calls "surprising outcomes" of the Inspector's construction amounts to nothing more than a 'merits point': it does not demonstrate any error of law. The Inspector's reasons for the conclusion he reached were compelling.

39.
Mr Simons acknowledges that PL 12.001/A is not listed as an approved plan, but there is no approved site plan. As this was an application for a new planning permission, there had to be a site plan, and it was not necessary to cast around far to find that PL 12.001/A had been provided and answered the question as to the geographical scope of the application.

40.
As regards the fact that this was an application for 188 units, 10 of which were outside the area within the red line on PL 12.001/A, Mr Simons submits that it is necessary to start by considering the site boundary. Here, that is made clear by PL 12.001/A and the covering letter. Any question about the layout of the units would have been a matter for later.

Decision and analysis

41.

The starting point is to consider the 2008 Permission itself, and any intrinsic documents. In this case, as was common ground at the hearing, the 2008 application, together with the covering letter and PL 12.001/A were incorporated by reference into the 2008 Permission.

42.
First, the site is described in the 2008 Permission as “Sladnor Park”, and the roads referred to are those which form the boundary of the site which is the subject of the 2006 Outline Permission (“the 2006 Site”). The site is also described in the 2008 application as “Sladnor Park” and the site area of 24.7 hectares is referable to the 2006 Site, not the area bounded in red on PL 12.001/A, which is much smaller, having an area of only a few hectares. The certification in the 2008 application that the owners of Lodge 38 and Lodge 41 had been notified of the application provides a further indication that “the land … to which this application relates” was the 2006 Site, as both lodges were within the 2006 Site, but neither was within the red line marked on PL 12.001/A.

43.
Secondly, the power to vary a planning permission only exists in a limited form. In this case, the various references to amending the earlier permissions did not strictly reflect the legal position. As the parties agree, what was sought and obtained was a new planning permission. Nevertheless, the contemporaneous references to amending the earlier permissions are informative as to the effect intended to be achieved. On the face of the operative part of the 2008 Permission, it permits amendments to both the 2006 Outline Permission and the 2007 Reserved Matters Approval, relating to “mix of accommodation”, amongst other matters, in accordance with the 2008 application. The 2008 application, in similar terms, describes the proposal as being to make minor alterations to both the 2006 Outline Permission and the 2007 Reserved Matters Approval. On the face of it, the application sought a new permission that would effectively vary the scheme that had been granted consent in 2006 (and in respect of which certain reserved matters had been approved in 2007).

44.
Thirdly, the specific variation sought, and granted, with respect to the mix of accommodation was a change from 206 units to 188 units. The 2008 Permission for 188 units encompassed permission for 24 Independent Living Units, 14 of which were within the red line on PL 12.001/A and 10 of which were outside of that line, but still within the 2006 Site. In my judgement, the fact that the 2008 Permission extends to 10 units located beyond the red line shown on PL 12.001/A is a very significant factor in considering the geographical scope of the 2008 Permission; and not one addressed in the Inspector’s decision. It is no answer to say that layout could be considered later because layout was not a reserved matter. On the face of it, consistently with the descriptions of the site to which I have referred, permission was granted in respect of units located on the (larger) 2006 Site, not just within the central area outlined in red on PL 12.001/A.

45.
Fourthly, if the 2008 Permission effectively varied the 2006 Outline Permission, as modified by the 2007 Reserved Matters Approval, the court would readily find that the conditions attached to the earlier permissions continue to apply, save to the extent that the time-limit was governed by the express condition in the 2008 Permission. Whereas if the 2008 Permission was concerned only with granting permission in respect of the area shown in red on PL 12.001/A, then such permission – in respect of the majority of the proposed built form on the site – would appear to have been granted free of any conditions (save the express 3 year time-limit). I agree with the claimant that it would be surprising if the second defendant intended to grant permission to build in a combe in Torbay free of any controlling conditions (save for the time-limit). In my view, it is wrong to characterise this as a

‘merits point’: if an interpretation leads to a surprising result, that is a factor to be considered in determining whether the interpretation is wrong.

46.
Fifthly, the effect of interpreting the 2008 Permission as relating only to the area within the red line on PL 12.001/A is that, if the 2008 Permission were implemented, it would potentially have been impossible to implement the 2006 Outline Permission in respect of the rest of the site (see paragraph 9 above). For example, if 17 ‘Care Suites (EMI)’ had been built (in accordance with the 2008 Permission), it would not then have been possible to implement the 2006 Outline Permission fully in accordance with its terms (which provided for no ‘Care Suites (EMI)’). It is clear on the face of the 2008 Permission and the incorporated documents that such an outcome would have been contrary to the intention of all concerned.

47.
Sixthly, the covering letter opens by describing the application as one to amend the existing 2006 Outline Permission. It reiterates, as stated in the application form itself, that the application is for 188 units, rather than the 206 units given consent in the 2006 Outline Permission.

48.
Each of the factors I have referred to above points towards the 2008 Permission having the same geographical scope as the 2006 Outline Permission. However, the letter then states: “To avoid any confusion, however, this application relates to the existing Reserved Matters approval, and we attach plan PL 12.001/A indicating the boundary for this application.” The area bounded by the red line on PL 12.001/A is only the central area, not the full area of the 2006 Site.

49.
The statement in the covering letter that PL 12.001/A indicates the boundary of the application is an important one and sufficient, in my view, despite the weight of factors going the other way, to cast doubt on the meaning of the 2008 Permission. But when the covering letter is read as a whole, and in the context of the 2008 Permission and the 2008 application, it does not give an unequivocal or clear-cut answer (cf UBB at [55]).

50.
The application was clearly stated on the application form itself and in the covering letter to be for 188 units. That application included 10 units which were not within the red line on PL 12.001/A. In my judgement, that provides strong support for the claimant’s submission that PL 12.001/A was intended to illustrate the differences between the proposed schemes. The application for 188 units, including the 10 that were not within the boundary on PL 12.001/A, was granted.

51.
It is also an important factor that PL 12.001/A is not an approved plan. In my judgement, the reference in the operative part of the 2008 Permission to the plans submitted must be read as referring to the approved plans and does not include PL 12.001/A. The lack of an approved site plan is supportive of the claimant’s case that the applicant and the second defendant understood the site would remain the same as the 2006 Site.

52.
Considering the intrinsic documents holistically, I am of the view that the numerous factors to which I have referred that weigh in favour of finding that the geographical scope of the 2008 Permission is the same as the 2006 Site - factors that I consider have particular probative value, appearing as they do

on the face of public documents – outweigh the paragraph in the covering letter, together with PL 12.001/A, which pulls in the other direction.

53.
Nevertheless, I accept the first defendant's submission that the terms of the covering letter create sufficient ambiguity as to the meaning of the 2008 Permission for it to be permissible to have regard to extrinsic evidence.

54.
The first piece of extrinsic evidence is the officer's report. The site address is given as "Sladnor Park". As in the 2008 Permission, the roads that surround the 2006 Site are specified in the description of the site address. The officer's report stated:

"**Site Details**

Sladnor Park is located west of Maidencombe Village and is a former holiday park bounded to the west by Teignmouth Road, to the north by Sladnor Park Road, and to the south and east by Rock House Lane and Brim Hill.

Occupying a 'Devon Bowl' or 'combe', the valley which comprises the grounds of the estate, slopes from west to east with views across to the coast. The extensive grounds include a mixture of protected woodland and mixed grassland.

The majority of the site is undeveloped, the original Sladnor House, now demolished, occupied a position at the head of the valley, east of the protected woodland. A range of derelict former chalet buildings have been removed from the site. Adjacent to this previously developed areas [sic] is an area occupied by holiday lodges, 2 of these are still occupied.

There are two vehicular accesses to the site, the principal access from Teignmouth Road and a secondary one from Sladnor Park Road.

This site is of landscape, ecological and archaeological interest. It is located within the Countryside Zone, Area of Great Landscape Value, Coastal Preservation Area and immediately adjacent to the northern boundary of the Maidencombe Conservation Area.

Outline planning permission for the scheme to re-develop the site as a Retirement Village was conditionally approved on 21st June 2006. Siting, design and access were "fixed" and external appearance and landscaping were "reserved". Reserved matters were subsequently approved."

This is manifestly a description of the 2006 Site, not a description of the far smaller central area shown bounded in red on PL 12.001/A.

55.
The proposal is described in the officer's report as being for:

"an amended scheme for a Class C2 Care Village involving changes to elevations, mix of accommodation and floorspace. The changes involve a change in the composition of the care accommodation."

56.
The revised proposal is stated to comprise accommodation including 24 independent living units. In addition, the officer's report contained an informative (see paragraph 32 above) which stated that the amendments are to the approved scheme as embodied in the 2006 Outline Permission and the 2007

Reserved Matters Approval, and that the conditions in those permissions would apply to the scheme as amended.

57.
The officer’s report provides further support for the view that I have reached on the intrinsic evidence. The other extrinsic evidence is in the form of the statutory declarations of Keith Cockell and Daniel Goddard. I note that their evidence regarding the intended scope of the 2008 Permission is consistent with the officer’s report, but for the reasons given by Lieven J in UBB at [56] to [57], I do not consider it appropriate to place weight on such evidence.

58.
The most important evidence is the 2008 permission, the 2008 application and the covering letter. Nevertheless, to the extent that the extrinsic evidence weighs in the balance, it weighs in favour of the view that I would have reached on the basis of the intrinsic evidence alone, if there was no extrinsic evidence available. I therefore conclude that the site of the 2008 Permission was the same as the 2006 Site.

Conclusion

59.
For the reasons I have given, the claim is allowed. I will hear Counsel on the appropriate form of relief.