



Neutral Citation Number: [2022] EWHC 2402 (Admin)

Case No: CO/30/2022

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

Bristol Civil Justice Centre
2 Redcliffe St, Bristol, BS1 6GR

Date: 28/09/2022

Before :

THE HON. MRS JUSTICE STEYN DBE

Between :

**THE KING ON THE APPLICATION OF (JAMES
NOBLE AND HELEN TAYTON-MARTIN)**

Claimant

- and -

CORNWALL COUNCIL

Defendant

-and-

CAPE CORNWALL CLUB LTD

**Interested
Party**

Daniel Stedman Jones (instructed by **Irwin Mitchell LLP**) for the **Claimant**
Sancho Brett (instructed by **Cornwall Council**) for the **Defendant**

Hearing date: 10 June 2022

Approved Judgment

This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10.30 AM on Wednesday 28th September 2022

Mrs Justice Steyn DBE :

A. Introduction

1. This is a claim for judicial review, by which the claimants challenge the decision of Cornwall Council dated 25 November 2021 ('the Decision') to grant conditional planning permission to the interested party for an extension to the premises of the Cape Cornwall Golf and Country Club in St Just, Cornwall ('the Site'). The Site lies in the Cornwall Area of Outstanding Natural Beauty ('AONB') and along the designated Penwith Heritage Coast. The permitted development is described as follows:

“Construction of extension to function room, alterations to entrance to Clubhouse, two detached buildings to house additional guest accommodation, self-contained manager’s accommodation, and various associated works and internal alterations.”

2. The Decision was a delegated one, made by a planning officer, following the recommendation made in an officer’s report ('the OR').
3. The claim has been brought, with the permission of Lang J, on three grounds:

(1) **S. 38 (6) Duty/AONB Duties:** The Council breached its duty under s. 38(6) of the Planning and Compulsory Purchase Act 2004 ('the PCPA 2004') and/or provided flawed or inadequate reasons by:

- a) Failing to give “direct consideration” as required by the applicable policy tests for development in an AONB and/or Heritage Coast;
- b) Failing to have regard to the Cornwall AONB Management Plan 2016-2021 ('the AONB Management Plan');
- c) Failing to have regard to potential harm to the area’s dark skies from the proposed development; and
- d) Failing to weigh the potential harm to the AONB in the planning balance and reach judgments as to whether the proposed development accorded with the development plan as a whole or how other important material considerations such as the National Planning Policy Framework ('NPPF') and AONB Management Plan Policy were determined;

(2) **Intensification:** The Council erred in law and/or provided flawed and/or inadequate reasons by:

- a) determining to grant permission against the advice of the Cornwall AONB Unit as to intensification;
- b) failing to take into account a material consideration and/or acting irrationally by failing to address the issue of intensification beyond the issue of a condition; and

- c) misdirecting itself, in the light of *Penwith District Council v Secretary of State for the Environment* (1977) 34 P&CR 271 (*‘the Penwith case’*), by finding that it would be “unreasonable” to impose a condition to control the potential intensification of the Site;
- (3) **Transport:** The Council erred in law by and/or provided flawed and/or inadequate reasons for:
- a) failing properly to inform itself and/or making the Decision without evidence as to transport impacts;
 - b) failing to have regard to a material consideration, namely, the objector’s expert Transport and Safety Review from Vectos Transport Consultants (*‘the Vectos Transport Report’*); and
 - c) failing to address in the OR the substance of the conclusions of the Vectos Transport Report.

B. Factual background

4. The application for planning permission was made on 30 March 2021, accompanied by, among other documents, a design and access statement (*‘the DAS’*). The Site was converted from a farmstead to a golf club in the 1980s and 1990s. The DAS stated:

“The application site contains the Cape Cornwall Club Clubhouse, outside amenity space, practice putting green and car parking area, which is positioned on the Cape Cornwall headland approximately 1km west of St Just.

...

There are existing residential dwellings to the south, Nanpean Farm Cottage and Nanpean Farm Flats, which are of a similar appearance to Cape Cornwall Golf Club Clubhouse. To the west of the clubhouse is Nanpean Barns holiday lets. To the north west are Praze Cottages, a terraced row of traditional granite faced cottages with natural slate tiles and wooden sash window. To the north is the Grade II listed Porthledden Hotel.”

5. As well as being in the AONB and on the Heritage Coast, the Site is in the open countryside and lies about a mile from the nearest town, St Just. The Cornwall AONB unit website describes West Penwith as:

“a sparsely populated peninsula, ringed by high cliffs and rising to high, rocky moorland at its centre. Also known as the Land’s End Peninsula, it is at the south-west extremity of England, surrounded on three sides by the pounding waters of the Atlantic Ocean. The area includes the fishing settlement of St Ives and a number of small villages. Access to most of the landscape is by narrow ancient lanes bounded by Cornish hedges.”

Since the decision was made, the area has been designated for its Dark Skies.

6. The DAS stated:

“The business has a history of failure which has resulted in some of the assets being sold off in the past. The new owners have identified an approach to increase letting accommodation and wedding event functionality and intend to improve and expand the business to this effect.” (Emphasis added.)

7. About 58 objections were received, including objections from the claimants based on, among other matters, the impact of intensification of the use in terms of noise, light pollution and traffic movements.

8. The AONB Unit made the following representations on 16 June 2021:

“The proposals seek a modest increase in the built form adjacent to the existing buildings associated with the golf club. We have no particular concerns about the location or form of the buildings proposed.

The provision of the additional accommodation and facilities at the club is identified to support events and weddings. Such use is likely to give rise to particular issues within the remote and somewhat isolated location. The noise, lighting and activity associated with such events will be in marked contrast to the existing natural qualities of the location where the relationship between the exposed coast cliffs and coastal landscape form the principal components of the designated landscape.

The introduction or intensification of such activity will be locally and more widely conspicuous and will detract from the wild and remote character of the location, particularly through the introduction of noise and light into the evening and night time landscapes.” (Emphasis added.)

9. The AONB Unit set out Policy MD9 of the Cornwall AONB Management Plan and commented:

“Of particular relevance to this application is the requirement to respect the ‘quality of place ... dark skies and tranquillity’. The proposed development with its increased facilities and use for functions and weddings with their attendant effects would appear not to deliver this requirement.” (Emphasis added.)

10. The AONB Unit representation continues:

“The Cornwall Local Plan Policy 2 sets out broad and ambitious requirements for new development within the county particularly in regard to ‘Respecting and enhancing quality of place’. This aspiration is further amplified in the Cornwall Draft Design Guide which states that ‘development should contribute the sense of place; it should respond to the local historical

cultural and landscape context and enhance and feel part of the existing settlement and landscape’. This development supporting intrusive and harmful uses will not provide for this.” (Emphasis added.)

11. The AONB Unit referred to Policy 23 of the Cornwall Local Plan and paragraph 172 of the NPPF (the predecessor to the current paragraph 176) and then stated:

The AONB enjoys the very highest level of landscape protection, equal to that of National Parks. The primary purpose of the designation is to conserve and enhance the natural beauty including attributes such as dark skies and tranquillity. Planning policy requires that development within the AONB deliver this purpose.

Whilst we have no in principle objection to the modest additional built form proposed, but have concern that the use of this will give rise to harmful effects on the local designated landscape in terms of light spill and noise.” (Emphasis added.)

C. Legal framework

12. There was no dispute as to the relevant legal principles which are well established.
13. Section 70(2) of the Town and Country Planning Act 1990 (‘the TCPA 1990’) provides, inter alia, that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the PCPA 2004 provides that “*If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise*” (emphasis added).
14. The weight which should be given to a consideration is a question of planning judgment, which is entirely within the exclusive province of the local planning authority which is at liberty (provided that it does not lapse into any public law error) to give a material consideration whatever weight it thinks fit or no weight at all: *Tesco Stores v Secretary of State for the Environment* [1995] 1 WLR 759, Lord Hoffmann, 780F-H.
15. The principles to be applied by the court when considering criticism of an officer's report to a planning committee were summarised by Lindblom LJ in *Mansell v Tonbridge & Malling Borough Council* [2017] EWCA Civ 1314, [2019] PTSR 1452 at [42]. The claimants particularly rely on Lindblom LJ's observation at [42](3) that there will be cases “*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*”. In this case, the decision was delegated, but the same injunction against hypercritical scrutiny of the OR applies. See, too, *St Modwen Developments Ltd v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, [2018] PTSR 746, Lindblom LJ, [6]-[7].
16. The legal principles to be applied in respect of the standard of reasons were summarised by Lord Carnwath at [35] to [37] and [42] in *R (CPRE Kent) v Dover District Council*

[2017] UKSC 79, [2018] 1 WLR 108. In particular, at [35], he endorsed the following summary given by Lord Brown:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the ‘principal important controversial issues’, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

D. The Policy Framework

17. Paragraph 176 of the NPPF states:

“Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.”

18. The Court of Appeal considered the effect of the predecessor to paragraph 176 of the NPPF in *Monkhill Ltd v Secretary of State for Housing, Communities and Local Government* [2021] PTSR 1432, Sir Keith Lindblom SPT observing at [29]-[30]:

“In my view, as Mr Richard Moules submitted for the Secretary of State, the policy in the first part of paragraph 172, which refers to the concept of “great weight” being given to the conservation

and enhancement of landscape and scenic beauty in an AONB, clearly envisages a balance being struck when it is applied in the making of a planning decision in accordance with the statutory regime under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act (see *Hopkins Homes Ltd*, at paras 21 and 75, and *East Staffordshire Borough Council*, at para 13). It is, as the judge recognised, a balance between what can properly be seen, on one hand, as a breach of, or conflict with, the policy and, on the other, any countervailing factors. To speak of a breach of the policy when the development would harm the AONB, or of a conflict with the policy in those circumstances, seems entirely realistic.

This, in my view, is plain on a straightforward reading of paragraph 172 in its context, having regard to its obvious purpose. The policy is not actually expressed in terms of an expectation that the decision will be in favour of the protection of the “landscape and scenic beauty” of an AONB, or against harm to that interest. But that, in effect, is the real sense of it – though this, of course, is not the same thing as the proposition that no development will be permitted in an AONB. If the effects on the AONB would be slight, so that its highly protected status would not be significantly harmed, the expectation might – I emphasise ‘might’ – be overcome. Or it might be overcome if the effects of the development would be greater, but its benefits substantial. This will always depend on the exercise of planning judgment in the circumstances of the individual case.”

19. ‘Policy 1: Presumption in favour of sustainable development’ of the Cornwall Local Plan provides that when considering development proposals

“the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework and set out by the policies of this Local Plan.

...

When considering whether a development proposal is sustainable or not, account will be taken of its location, layout, design and use against the three pillars of economic development, social development and environmental protection and improvement.”

20. ‘Policy 2: Spatial Strategy’ of the Cornwall Local Plan provides that proposals should respect and enhance the quality of place, maintaining and respecting the special character of Cornwall.
21. ‘Policy 5: Business and Tourism’ of the Cornwall Local Plan provides:

“...3. The development of new or upgrading of existing tourism facilities through the enhancement of existing or provision of new, high quality sustainable tourism facilities, attractions and accommodation will be supported where they would be of an appropriate scale to their location and to their accessibility by a range of transport modes. Proposals should provide a well balanced mix of economic, social and environmental benefits. ...”

22. Policy 23: Natural environment of the Cornwall Local Plan provides:

“1. Development proposals will need to sustain local distinctiveness and character and protect and where possible enhance Cornwall’s natural environment and assets according to their international, national and local significance.

2. Cornish landscapes

...

Development must take into account and respect the sensitivity and capacity of the landscape asset, considering cumulative impact and the wish to maintain dark skies and tranquillity in areas that are relatively undisturbed, using guidance from the Cornwall Landscape Character Assessment and supported by the descriptions of Areas of Great Landscape Value.

...

2(a). The Cornwall and Tamar Valley Area of Outstanding Natural Beauty

Great weight will be given to conserving the landscape and scenic beauty within or affecting the setting of the AONB. Proposals must conserve and enhance the landscape character and natural beauty of the AONB and provide only for an identified local need and be appropriately located to address the AONB's sensitivity and capacity. Proposals should be informed by and assist the delivery of the objectives of the Cornwall and Tamar Valley AONB Management Plans including the interests of those who live and/or work in them. ...

2(b). The Heritage Coast and Areas of Great Landscape Value

Development within the Heritage Coast and/or Areas of Great Landscape Value should maintain the character and distinctive landscape qualities of such areas. ...”

23. The Cornwall AONB Management Plan states:

“Landscape is more than just a sum of its parts. It is a sense of place. It is the combination of the physical environment and how we experience it that gives an area unique character. It is aesthetics and sensory perception; it is the dark night skies and quality of the light. It is the quintessential Cornwall that we love and Cornwall’s key economic, social and environmental asset.”

24. Policy MD9 of the Cornwall AONB Management Plan provides:

“Any necessary development in or within the setting of the AONB will be high quality sustainable development that:

- is appropriately located, of an appropriate scale and addresses landscape sensitivity and capacity;
- is compatible with the distinctive character of the location described by the Landscape Character Assessment, with particular regard to the setting of settlements and the rural landscape;
- does not compromise the special qualities and characteristics of the AONB designation as outlined in the Statement of Significance for each local section and relevant character assessments;
- maintains semi natural corridors;
- promotes the conservation of the historic environment as a whole and in particular those designated heritage assets and their setting; including the Conservation Areas and World Heritage Site;
- is designed to respect the quality of place in the use of distinctive local building styles and materials, dark skies and tranquillity; and
- protects trees, other important landscape features and semi natural habitats in order that it can contribute to the conservation and enhancement of the natural beauty of the protected landscape.”

E. The Officer’s Report

25. The OR is a 22-page document. The boxes on the first page of the report include the following words:

| |
|--|
| Departure: N |
| Complies with Development Plan? Y/N |

If not, ensure you cover in the report how material considerations outweigh the plan?

26. In her second witness statement, the planning officer, Katie Mosley said:

“11. The Council uses a case management system to assist planning officers in recording information, progressing applications, preparing reports and decision making. Where an application is being considered under delegated powers there is a specific part of the system which is used. This includes several ‘y/n’ answer boxes. One of those boxes is ‘Departure’. I marked this box with a ‘N’ and not ‘Y’ in the programme to indicate that I did not consider the application to depart from the Development Plan. As is evident from my report, I did not consider that the application was a departure from any specific policy of the Development Plan. I could not therefore decide that the application was a departure from the Development Plan considered as a whole.

...

15. The Claimant says: ‘on page 1 of the OR, the box asking this question is simply omitted’. ...

16. The information contained in these boxes was inputted automatically from the information which I had completed in the computer programme. The programme generates a report template including the information in these boxes. The information was not inserted manually into the boxes in the report document by me. In fact I have since checked the programme and cannot see that there was any ability to change the information in the fields manually as I would be able to do with the text in the substantive body of the report.

17. The answer ‘N’ next to [‘Departure’] would have been inserted automatically because I had previously completed the question in our planning programme – see paragraph 11 above.

18. There is no question in our programme for box below it ‘Complies with Development Plan’ which I would be able to tick and I cannot see how it would be possible to insert any text into the template created. This might be because the question is redundant in light of the ‘departure’ question in that, if an application complies with the Development Plan, then it is not a departure from it. I have checked with our Planning Systems Support Team Leader who has confirmed that there is no selection box for the field whereby you can select a ‘Y’ or ‘N’.”

27. Under the heading “Consultee representations”, among other matters, the OR noted the 16 June 2021 letter from the AONB Unit (with the comment “*see documents tab*”) and

set out the representations from Highway Development Management – West (see below). The OR noted the various applicable designations, including as an Area of Outstanding Natural Beauty and part of the Heritage Coast. The relevant policies, SPGs and Government guidance were noted, including policy 23 of the Cornwall Local Plan, the Cornwall AONB Management Plan, and the relevant section of the NPPF.

28. Under the heading “Balance of Considerations” the OR noted:

“The various elements of the proposal, including, the two new letting units, the small extensions to the existing function room and the main club house, the manager’s accommodation and various associated works and internal alterations are all intended to expand and improve an existing and established rural business.”

29. The OR referred to paragraphs 81, 84, 85 and 119 of the NPPF and policy 5 of the Cornwall Local Plan which “*supports the development and upgrading of existing tourism facilities through the enhancement of existing or provision of new, high quality sustainable tourism facilities, attraction and accommodation where they are of an appropriate scale to their location and to their accessibility by a range of transport modes*”. The OR stated:

“The proposed extensions and letting units will support the existing business and the manager’s accommodation is required on the premises for site security. The proposal has the potential to promote social interaction, service the community need and regenerate the existing tourist infrastructure and as such the proposals are considered acceptable in principle.”

30. The OR then addressed “Visual Impact” as follows:

“The AONB office were consulted and described the development as being ‘a modest increase in the built form adjacent to the existing buildings associated with the golf club. We have no particular concerns about the location or form of the buildings proposed.’

However, the AONB officer went on to raise concerns over the use of the club for events and weddings and the resultant noise, lighting and activity associated with such events.

The noise impacts will be dealt with in further detail below however, having looked at the planning history, it is clear that no restrictive conditions to control the use of the premises were ever imposed, such that various functions and weddings have been carried out over the years.

It would be unreasonable to now impose any restrictive conditions in this respect.

The proposed letting units have been carefully designed to have the appearance of traditional stone barns and are well integrated within the built form of the premises. The extensions proposed to the clubhouse are single storey, will be constructed with materials to match and complement the existing building and do not significantly increase the proportion of glazing than what is existing, particularly to the most prominent north elevation. With regard to the manager's accommodation unit, concerns have been raised over the siting beyond the existing boundary wall to the clubhouse. In this particular case it is considered that the proposal would not have a significant impact on the character of the area due to this small parcel of land being well related to the existing cluster of buildings behind. The accommodation is to be set back against and dropped down at a lower level to a high existing wall and has been designed to give the appearance of a modest agricultural outbuilding. This area of land is already used as a green associated with the golf course and used for overflow parking. Despite the concerns raised regarding future applications in this location, precedent is extremely rarely a reason to refuse a specific development, particularly as every application is determined on its own merits. The application site is considered to integrate with the built form of the existing cluster of development particularly when viewed from the road with the large club house set at a much higher level behind.

As described by the AONB office, the proposed developments are modest in scale and are located adjacent to the existing buildings. The minor increase in the amount of glazing on the site is not considered to be so significant to cause any adverse visual impacts. The glazed gable end of the manager's accommodation has been designed to be 'in-set' from the end of the building which will decrease the amount of light spill from this element of the proposal and boundary treatment will be conditioned which will help further in this respect. On balance the scale, siting and design of the proposed development is considered acceptable and would preserve and enhance the character and appearance of the area and will conserve and enhance the natural beauty of the AONB. The proposal would comply with Policy 23 of the Cornwall Local Plan, which seeks to protect Cornwall's natural environment." (Emphasis added.)

31. Under the heading "Noise Impacts and Residential Amenity" the OR stated:

"The community protection team were consulted and commented as follows:

'With regard to this application the Community Protection team is now satisfied that the use of the function room is likely not to have a detrimental impact on local residents from noise. Should complaints be received in the future they can be investigated

using the relevant Licensing and/or Statutory Nuisance legislation.’

The applicant’s agent also commented in this respect as follows:

[¹]. The proposal includes the expansion of the function room over a significant part of the terrace. This will bring a greater level of activity into the building, whereas, at present, certain functions and events utilise the terrace in its entirety for activities as the function room is not sufficiently large to accommodate them. Whilst there will continue to be external activities as part of events in the function room and general eating out during the day when weather permits, the overall effect will be a reduction in those activities, due to the decrease in area that is afforded to these; and,

– The proposal includes guest accommodation in the yard area immediately to the east of the terrace. It would be nonsensical for the applicants to allow noisy activities to persist to the detriment of their own guests.^[1]

Given the siting, existing boundary treatments and modest scale and single storey nature of the proposed letting units, it is considered that this element of the proposal would not be harmful to neighbour amenity from overlooking, overshadowing or overbearing nor from any significant additional noise. A condition will be imposed to ensure the letting units are only ever used in conjunction with the existing business and for holiday accommodation only. With regard to the extensions to the main clubhouse, the extensions to the eastern elevation of the club house are minor and will not impact upon [any] neighbouring dwellings. The clubhouse extensions to the north elevation will be constructed over the existing outdoor terrace and will in effect, move much of the activity that currently occurs outdoors, indoors. As such the extension to allow for further seating indoors within the existing function room is not considered to generate significantly increased noise levels to what is existing and would therefore not result in significant harm to neighbour amenity from disturbance.

Community protection have been consulted and as indicated above, do not consider that the proposed development will have a detrimental impact on local residents from noise. ...” (Emphasis added.)

32. The OR set out the first representations from the Senior Development Officer (Highways), Mr Robin Watson, dated 19 May 2021, which stated:

“Please submit a Transport Statement outlining the trip rate of the proposals, alongside an assessment of mitigating measures

and improvements to the access route along Cape Cornwall Road.

Please re-consult once the above has been addressed.”

33. Mr Watson’s further representations on 30 July 2021 were also set out in the OR and stated:

“... I acknowledge that the C343/U6002 leading from St Just to Cape Cornwall is constrained, largely single track in nature and lacking formal passing places although a number of informal passing places are available.

A request for a Transport Statement (TS) has been declined however a Supporting Statement (SS) which includes a subsection on Highways has been submitted.

The TS was specifically requested to assess the trip rate of the proposals as well as identify any improvements to the C343 and U6002 that could mitigate the impacts of the development.

The SS on the trip rate outlines that the golf club does not operate at the levels first anticipated and the likely traffic generation of the proposed development will not be significant in the context of the historic expectation when the highway network was considered adequate to accommodate that use.

I consider the above subjective in that it is not based on evidence such as traffic surveys.

The proposals include a one bed managers dwelling, extension to the function room and 12 bedrooms of additional guest accommodation.

I consider the managers dwelling not pertinent to the determination of the Highways aspect of this application since the manager would likely be onsite already.

The additional 12 beds of guest accommodation would produce a low trip rate in comparison to the existing flows of traffic on the C343/U6002, dispersed throughout the day and outside to the network peaks.

In neutral months and based on radar class speed data approximately 350 vehicles use the C343/U6002 a day, although I appreciate that this is likely to significantly increase in the peak tourist season.

In comparison, I do not consider the additional trip generation from the 12 bedrooms would materially impact the safe and efficient operation of the local highway network and a number of recent approvals for holiday accommodation served by the

C343/U6002 undermine any objection to this element of the application.

The extended function room depending on its use has the potential to generate large volumes of traffic, for example linked to weddings. I understand that the room has been used for various types of events, weddings, parties etc for at least 30 years.

The existing unrestricted use of the function rooms means that any number of vehicles can access the facility during events, a situation which the extension would not materially alter.

There is an absence of personal injury accidents on the C343/U6002 for the latest five years of available data indicating that the highway network functions without an existing safety problem.

I acknowledge the constraints of the proposed access route but based on the above do not consider an objection on highway grounds could be substantiated at a later date.

I have no objection to this application and recommend a condition for an event traffic management plan.”

34. The claimants’ solicitors sent the planning officer the Vectos Transport Report and a covering letter containing further representations addressing that report, and other matters, on 11 August 2021. The Vectos Transport Report stated that planning permission should be refused on highways safety grounds, expressing the key conclusion in the following terms:

“The proposals, while modest in scale, will have a material impact on safety along Cape Cornwall Road. While additional vehicle traffic will have a modest impact on road capacity, it will be on a link that is already operating over capacity and where the occurrence of reversing to pass other vehicles will increase. This in turn represents a significant risk to pedestrians and cyclists who currently use the link, and those new users associated with the expansion proposals supported by this planning application, who will either be accessing St Just for leisure purposes, or those who will be using St Just for overnight accommodation.

It is the latter that are of particular concern, with evening events extending beyond daylight hours, there is a significant risk that those visitors who are using accommodation in St Just will be walking along Cape Cornwall Road in the dark, where no street lighting or footway exists, putting pedestrians at significant risk.

Conclusion

In conclusion, the proposals have not been properly considered from a highway safety perspective, and in the context of the site location and specific uses proposed, they represent a material risk to existing and proposed users of Cape Cornwall Road.”

35. The planning officer forwarded the claimants’ solicitors’ letter and the Vectos Transport Report to Mr Watson the following day and he responded on 13 August 2021:

“As stated in my consultee response, I consider the holiday accommodation the sole element of the application which could lead to additional material trips being generated by the site.

The existing unrestricted use of the function rooms mean that any number of vehicles could access the facility during events, a situation the extension would not materially alter. The planning application provides the opportunity to control and mitigate this element via a condition for an Events Management Plan, something not currently in play.

The part of the letter focused on my comments is largely focused on the safety and suitability of the C343/U6002 which I do not dispute is less than ideal.

On the above, a number of recent approvals for holiday accommodation served via the C343/U6002 do not appear to have materially impacted how the carriageway functions from a safety aspect with an absence of personal injury incidents for the latest five years of available data.

In addition, the additional holiday accommodation is split between an eight bed unit and a four bed unit.

On both accounts this would not equate to 12 additional cars with family/friends likely to share on arrival to the accommodation.

I therefore consider that the additional trip rate would be minimal and imperceptible against the daily flows and seasonal variation of vehicles using the C343/U6002.

As a final point, I requested a Transport Statement (TS) in my initial response and it is the applicant’s prerogative not to comply with this request.

I have therefore determined the application based on the information submitted and consider, in part based on my comments above regarding the additional material trip rate being solely linked to the holiday accommodation, a TS not pertinent to the determination of the application.”

36. Under the heading “Highways Impacts and Parking” the OR referred to the highways officer’s representations dated 30 July 2021 and to the interested party’s agent’s response to the highways concerns raised by objectors. The OR concluded:

“An event management plan was subsequently requested in the interests of controlling the travel impact on the local highway network. Subject to a condition to ensure the details within the event management plan are followed and made available to all function organisers and private hire staff prior to each event, the proposal is considered acceptable in terms of the highways impact and will accord with the aims and objectives of policy 27 of the Cornwall Local Plan.” (Emphasis added.)

37. In a bullet point list covering two and a half pages of the OR, the planning officer briefly addressed concerns raised in a number of public representations. In respect of noise, visual impact, light pollution/impact on Dark Skies and impact upon “AONB/WHS/Historic and Listed buildings and unique heritage of the headland”, the OR noted that each issue had already been assessed or addressed within the OR. With respect to “*use of the premises for events and weddings ...*”, the OR repeated that the “*planning history indicates that no restrictive conditions to control the use of the premises were ever imposed, such that various functions and weddings have been carried out over the years. It would be unreasonable to now impose any restrictive conditions in this respect.*” With respect to visibility from the Southwest Coast Path the OR concluded that this “*visual impact of the proposed development has been assessed within the Officer report above and given its acceptability in this respect, combined with the separation distance between the site and the coastal path, there is not considered to be any significant adverse impact upon the enjoyment had by users of the public right of way*”.

38. Finally, the OR stated:

“Conclusion:

Taking these factors into account, on balance it is considered that the proposal is acceptable, subject to conditions. All other matters raised have been taken into account, including the planning history and the comments of the Town Council and Divisional Member, but none is of such significance as to outweigh the considerations that have led to the conclusion.”

F. The parties’ submissions

Evidence

39. The claimants submit that paragraphs 6 to 10 of the second witness statement of Ms Mosley contain inadmissible ex post facto reasons for the decision. No objection has been taken to the paragraphs of Ms Mosley’s statements that I have referred to above. Although the Council does not accept that the paragraphs to which exception was taken are inadmissible, Mr Brett did not place weight on them. Insofar as Ms Mosley’s statement refers to the policies that she considered, those are evident from the list given in the OR. And insofar as she states her familiarity with Cornwall Local Plan and the

St Just-in-Penwith Neighbourhood Plan, it is, in any event, a reasonable assumption that local decision makers have local knowledge and familiarity with the relevant policies of the development plan and the national planning policy.

Ground 1: S. 38 (6) Duty/AONB Duties

40. The claimants submit that the Council did not perform its statutory duty to determine the application in accordance with the development plan unless materials considerations indicate otherwise. First, they submit that the OR emphasised the policies that provided positive support for the development but failed to provide balance by setting out and giving “direct consideration” to policies 2 and 23 of the Cornwall Local Plan which were highly relevant in considering intensification of use in the AONB and along the Heritage Coast.
41. Secondly, the claimants contend the Council did not give “direct consideration” to paragraph 176 of the NPPF and Policy MD9 of the AONB Management Plan, which were “obviously material” to the Decision. The OR did not engage with the substance of the AONB Management Plan, failing to give adequate consideration to the potential impact on dark skies highlighted by objectors.
42. Thirdly, the Claimants submit that the Council failed to assess and weigh in the balance the potential harm from the proposal, and to reach a conclusion as to whether the proposed development accorded with the development plan. The Council’s planning judgment is not lawful because of the failure to address the issue of intensification of use and to assess the impact against the relevant policies. The claimants submit that the Council’s focus on the acceptability of the proposed development in terms of its modest built form ignores the potential harm arising from the intensification of use. The potential impact of the proposed development on the sense or quality of place, and in terms of noise and light, needed to be considered not only in terms of neighbourhood amenity but also against the AONB policy requirements. The claimants contend no lawful balancing exercise was undertaken and so it is not possible to infer a conclusion that the Application accorded with the development plan as a whole.
43. The Council submits that the OR should be considered in the context of the development for which planning permission was given being no more than a modest extension to the built form which was assessed as having no noise impact and causing limited light spill. The OR expressly considered policy 23 and reached the conclusion that the development would conserve and enhance the natural beauty of the AONB. Contrary to the claimants’ case, the Council’s conclusion was that the proposed development would not harm the AONB. The Council contends that, considered fairly and in context, the OR demonstrates that all relevant matters were considered. In reality, the claimants’ complaint is a challenge to the way in which the Council exercised its planning judgment.
44. The Council submits that it is clear that the planning officer found the proposed development to be in accordance with the development plan. The planning officer considered the letter from the AONB Unit, as well as the information from the interested party, and reached her own view as a matter of planning judgment. In reaching this view she directly considered policies 2 and 23 of the Cornwall Local Plan and found the proposal would comply with them.

45. It is also evident from the OR that the planning officer considered paragraphs 176 and 178 of the NPPF and MD9 of the AONB Management Plan, as she referred to them (or to the section containing them) in the list of relevant policies. In any event, the paragraphs of the NPPF relied on, and MD9, do not add to the matters the Council was required to, and did, consider under policy 23 of the Cornwall Local Plan.

Ground 2: Intensification

46. The parties' submissions on grounds 1 and 2 overlapped. The claimants contend that the OR only dealt with the question of noise and light pollution in the context of the limited issues of neighbour amenity and light-spill from the proposed manager's accommodation, failing to address the wider issue of the impact of intensification of use on the AONB, or to provide reasons why harm from intensification was outweighed. The claimants submit that the Council erred in accepting the unevidenced assertions made by the interested party in relation to the existing use of the Site, disregarding the contradictory objections.
47. The claimants submit that the conclusion in the OR that imposing a condition to control the use of the site would be unreasonable was a misdirection, as the planning officer failed to appreciate that, when granting planning permission, a planning authority may attach conditions which restrict existing use rights. Or alternatively, the conclusion was unreasonable and/or inadequately reasoned, albeit the claimants do not suggest that the Council would have been bound to impose a condition if the matter had been considered on a lawful basis.
48. The Council contends that it is clear from the OR that the planning officer considered the issues of noise, light spill and the character of the place, and took the view that the proposal would preserve and enhance the natural beauty of the AONB, not harm it.
49. The Council submits it is clear that the planning officer did not misdirect herself. She considered that imposing a condition would be "unreasonable", not impermissible. She was clearly aware that she could impose a condition relating to existing use as she did so when imposing condition 5 which requires the completion of an Event Management Plan prior to each event. The planning officer would have been very conscious of the requirements for a condition to be imposed, in particular paragraph 56 of the NPPF which states that "*planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects*". Her conclusion that imposing a condition would be unreasonable was a matter of planning judgment which could not be faulted in the context of an application for such a modest extension.

Ground 3: Transport

50. Mr Stedman Jones, Counsel for the claimants, acknowledged that planning permission is rarely refused on highway grounds, the impact would have to be severe for that to occur, and so on its own this ground would be likely to be insufficient. Nevertheless, the impact is material and should, the claimants submit, be considered together with the earlier grounds. The claimants contend that in the absence of any other independent evidence on transport matters, and in circumstances where the Highways Officer expressed concern regarding the absence of such evidence, the Vectos Transport Report warranted consideration. They submit that it was an obviously material consideration

to which the Council failed to have regard. Alternatively, if the conclusions of the Vectos Transport Report were not accepted, the OR provided no reasons why that was the case.

51. The Council contends that there is no reasonable argument that the planning officer did not fully consider transport issues. She consulted the expert highways officer and was entitled to place greater weight on his view. In the context of this modest extension, and having regard to the large number of issues raised by objectors, it was adequate for her to address this issue as she did, without referring expressly to the Vectos Transport Statement.

G. Analysis and decision

52. I reject the contention that the planning officer failed to address the question whether the proposal was in accordance with the development plan. It is manifest from the OR that she determined that the application did not involve any departure from the development plan. The officer clearly answered no to the question whether the application involved a departure from the development plan. That answer was entirely consistent with the contents of the OR. She did not consider the development breached any individual policy, and so obviously regarded it as consistent with the development plan as a whole.
53. The fact that the ‘Y/N’ question whether the proposal complies with the development plan is not answered does not undermine the clarity of the OR on this issue. That is so even without having regard to the planning officer’s evidence. But I also accept her evidence that a flaw in the way in which information is entered onto the computerised form had the effect that she was not able to answer that question, which effectively repeated the question she had answered whether the proposal was a departure from the development plan.
54. In my judgment, the contention that the Council failed to give direct consideration to policies 2 and 23 of the Cornwall Local Plan, in respect of development in AONBs and along the Heritage Coast, is plainly ill-founded. The OR expressly listed both policies as relevant. The planning officer consulted the AONB Unit, took into account their representations, and addressed in terms the key policy, which requires “*great weight*” to be given to conserving the landscape and scenic beauty within or affecting the setting of the AONB.
55. The AONB Unit expressed the view that the “*introduction or intensification*” of use of the Site for weddings and other functions would introduce noise and light into the evening and night time landscapes, detracting from the wild and remote character of the location, and the quality of place. The planning officer clearly took a different view. She addressed the question of light spill, impacting on Dark Skies, and found that the ‘in-set’ design of the manager’s accommodation would decrease the amount of light spill from that element of the proposal, and the modest, single storey extensions proposed to the clubhouse did not significantly increase the amount of glazing.
56. With respect to noise, the planning officer considered that the proposal would not result in any significant additional noise. The key factors leading to that conclusion were the modest scale, siting and existing boundary treatments, together with the officer’s assessment that as the clubhouse extensions to the north elevation would be constructed

over the existing outdoor terrace, much of the activity that currently takes place outdoors would be moved indoors. Although the OR referred to noise in the context of neighbour amenity, it is clear from the planning officer's reference to noise in the context of visual impact that she considered the question of harm to the AONB and Heritage Coast from noise. While lack of harm to neighbour amenity may not necessarily indicate lack of harm to the AONB, it is evident that in this case the planning officer considered that one followed from the other. That is unsurprising in the circumstances given the proximity of neighbours to the Club and the planning officer's finding, for the reasons she gave, that the proposal would not result in any significant additional noise.

57. It is also evident that the planning officer considered that the proposal would not have a significant impact on the character of the area. Her planning judgment, having regard to the scale, siting and design of the proposed development, was that it would preserve and enhance the character and appearance of the area and would conserve and enhance the natural beauty of the AONB, and so the proposal would comply with policy 23 of the Cornwall Local Plan.
58. The planning officer expressly identified section 15 of the NPPF, which contains paragraphs 176 and 178, as well as the Cornwall AONB Management Plan as relevant policies. I reject the contention that she failed to have regard to these matters. Moreover, as I have said, she expressly addressed policy 23 of the Cornwall Local Plan. Policy 23, in particular paragraph 2(a), is clearly drawn from and expands upon paragraph 176 of the NPPF. For an area of Heritage Coast that is within the AONB, paragraph 178 of the NPPF does not add to paragraph 176, but it is in any event essentially reflected in policy 23, particularly paragraph 2(b). Similarly, paragraph MD9 of the Cornwall AONB Management Plan, in particular the requirements for development not to compromise the special qualities and characteristics of the AONB designation, and for it to be "*designed to respect quality of place in the use of distinctive local building styles and materials, dark skies and tranquillity*", reflects policy 23 of the Cornwall Local Plan.
59. The claimants' contention that the planning officer failed to weigh the potential harm to the AONB in the balance and reach a judgment as to whether the proposal accorded with the development plan as a whole is unfounded. The planning officer found that the proposal would not harm the AONB: on the contrary, it would conserve and enhance its natural beauty. There was, in her planning judgment, no harm to be balanced against other benefits.
60. I also reject the claimants' contention that the Council acted irrationally or gave flawed or inadequate reasons for determining to grant permission against the advice of the Cornwall AONB Unit. I have addressed the reasoning in the OR above on the key issues. The planning officer's judgment was not irrational or unreasoned. In reaching her conclusion she addressed the details of the specific proposal in a way that the AONB Unit's representations understandably had not including, for example, matters such as the way in which the design of the manager's accommodation was in-set and the degree to which the extension of the Club facilities increased the indoor space while reducing the outdoor facilities. In the circumstances, the Council was rationally able to reach the conclusion that it did.
61. I accept Mr Brett's submissions that the Council did not misdirect itself in determining that it would be unreasonable to impose a condition restricting events such as weddings.

There is no basis for inferring that the planning officer was under the mistaken impression that she could not impose such a condition. That is not what the OR said and such an understanding would be inconsistent with the imposition of condition 5. It is fair to say that the reasoning is sparse in stating that imposing a condition would be unreasonable. But I am not persuaded that it was inadequate in the circumstances. The context was that the planning officer considered that the modest proposed development would enhance, not harm, the character of the area and the natural beauty of the AONB. Her judgment that it would be unreasonable, in response to such a proposal, to impose a condition restricting long-existing rights was adequately explained and not irrational.

62. More broadly, the reasoning in the OR is proportionate to the nature of the application, and in my view the planning officer has adequately addressed the material issues, including that of intensification. On analysis, for the reasons that I have given, I consider that grounds 1 and 2 lack merit and should be dismissed.
63. In my judgment, the claim based on ground 3 must also be dismissed. It is evident that the Council considered the Vectos Transport Statement, seeking and obtaining the highways officer's response to it. It was not necessary for the OR to refer to every document or representation taken into account. The weight given to the evidence as to highways impact was a matter for the Council exercising its planning judgment. The Council evidently adopted the advice given by the highways officer that the development was acceptable from a highways perspective as long as condition 5 was included. That was a rational decision, not least as the highways officer's view was itself a reasonable one underpinned by clear reasoning.

H. Conclusion

64. For the reasons I have given, the claim is dismissed.