



Neutral Citation Number: [2026] EWCA Civ 283

Case No: CA-2025-003113

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
Mrs Justice Lang DBE

[2025] EWHC 3060 (Admin)
Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/03/2026

Before:

LORD JUSTICE LEWISON
LORD JUSTICE LEWIS
and
LORD JUSTICE DOVE

Between:

R (on the application of)
WILDFISH

Appellant

- and -

(1) BUCKINGHAMSHIRE COUNCIL
(2) DAVID WILSON HOMES (SOUTH MIDLANDS) Ltd
(3) ANGLIAN WATER SERVICES LIMITED

Respondents

Jonathan Welch (instructed by **WildFish**) for the **Appellant**
Charles Streeten and Stephanie Bruce-Smith (instructed by **Buckinghamshire Council**) for
the **First Respondent**
Hashi Mohamed and Edward-Arash Abedian (instructed by **Dentons**) for the **Second**
Respondent
The **Third Respondent** did not appear and was not represented

Hearing date: 18 February 2026

Approved Judgment

This judgment was handed down remotely at 3.00pm on 13 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Dove:

Introduction

1. This is an appeal against an Order made by Lang J in which she dismissed a Judicial Review brought both by the appellant and another claimant in respect of the first respondent's approval of an application for reserved matters on 4 March 2025. The reserved matters related to a housing development for up to 170 dwellings and associated infrastructure at Land Off Walnut Drive and Foscoote Road, Maids Moreton, Buckinghamshire. All planning applications in this case were made by the second respondent.

The Facts

2. The second respondent applied for the outline planning permission for up to 170 dwellings and associated infrastructure on 20 January 2016. The application was made with all matters reserved with the exception of access. Permission was granted for the second respondent's application subject to conditions on 24 March 2022 ("the outline permission"), with the number 16/00151/AOP. The terms of the outline permission, including the terms of the relevant conditions imposed, were as follows:

"Outline application with all matters reserved except access for up to 170 dwellings, public open space and associated infrastructure

AT:-

Land Off Walnut Drive And Foscoote Road Maids Moreton
Buckinghamshire MK18 1QQ

In accordance with your outline application and the plans and particulars accompanying it subject to the following conditions and reasons:-

1. Details of the appearance, landscaping, layout and scale, (herein after called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development should be carried out as approved.

Reason: The application is for outline planning permission.

2. Application for approval of the reserved matters shall be made to the Local Planning Authority no later than eighteen months from the date of this permission.

Reason: To prevent the accumulation of planning permissions: to enable the Council to review the suitability of the development in the light of altered circumstances and to comply with the provisions of Section 92(2) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

...

13. The details to be submitted for approval in writing by the Local Planning Authority in accordance with Condition (1) above shall include a foul water drainage scheme for the site. The scheme shall include a waste water treatment capacity assessment to identify the need for any infrastructure upgrades and a programme for carrying out the works to inform site delivery.

No part of the development shall be occupied until confirmation has been provided to the local planning authority that the scheme and programming of any wastewater upgrades required to accommodate the additional flows from the development have been agreed with Anglian Water; and all wastewater upgrades required to accommodate the additional flows have been completed. The development shall be carried out in accordance with the approved details.

Reason: Network reinforcement works are likely to be required to accommodate the proposed development. Any reinforcement works identified will be necessary in order to avoid sewage flooding and/or potential pollution incidents in accordance with policy 15 and D=MMO006 of the Vale of Aylesbury Local Plan and the National Planning Policy Framework.”

3. It should be noted that other conditions on the outline planning permission which dealt with substantive issues also included the phrase “the detail to be submitted for approval in writing by the local planning authority in accordance with condition (1) shall include...”. Instances of this form of condition related to the question of trees and arboricultural considerations in condition 11 and existing and proposed levels in condition 12.
4. On 25 May 2023 the second respondent submitted a reserved matters application. The development applied for was described in the following terms: “Reserved matters being sought for appearance, landscaping, layout and scale for 163 dwellings on Land Off Walnut Drive and Foscoote Road and discharge of condition 22 (biodiversity net gain) and condition 8 (CMP) of outline approval 16/00151/AOP.”
5. The reserved matters application was given the reference 23/01636/ADP. The application form submitted identified that the reserved matters related to the outline planning permission which had been determined on 24 March 2022. A duplicate application was submitted on 18 September 2023 which it appears has not been determined. Errors in the original reserved matters application were corrected by a resubmission of plans and documents on 16 October 2023. A further application form together with a covering letter dated 28 March 2024 was submitted by the second respondent’s agents and related to the reserved matters application 23/01636/ADP (and its duplicate). The covering letter with the application form explained that the second respondent, having reviewed the comments which had been made on the application, had performed a number of updates to the material comprised in the reserved matters proposals which were addressed in the material covered in the submission.

6. During the course of 2023 and 2024 the second respondent engaged in correspondence with Anglian Water in respect of the requirement in condition 13 for a waste water treatment capacity assessment as part of the infrastructure provision for the dwellings granted permission in outline. On 3 July 2024 Anglian Water sent an email to the first respondent explaining their position in the following terms:

“Our response stating the drainage strategy is acceptable to us relates to the local foul network, it does not relate to the receiving water recycling centre (WRC), which is Buckingham WRC.

Buckingham WRC does not currently have dry weather flow headroom to accommodate the additional flows from this development site. However, as the site has outline permission Anglian Water is obligated to accommodate the additional flows. This process is managed by us, and the funding comes from customer bills. It is not a process the developer can engage in or have any influence.

We have identified Buckingham WRC as requiring investment in our Drainage and Wastewater Management Plan and our draft Business Plan. However, our Business Plan is subject to Ofwat approval, and our planned investment will have to change if Ofwat does not agree with what we have proposed.

Final determination is in December. Our Business Plan covers the period 2025-2030 and we cannot guarantee that the proposed investment strategy does not change due to risks and prioritisation.

In summary we have no committed investment at Buckingham WRC and it does not currently have headroom to accommodate the additional flows”

7. Against this background the second respondent submitted an application pursuant to section 73 of the Town and Country Planning Act 1990. The application form referred to a covering letter describing the development which was proposed pursuant to the application. In the covering letter from the second respondent dated 20 September 2024 the application was described as “Variation of Condition 13 of 16/00151/AOP on Land off Walnut Drive and Foscoote Road to allow details to be submitted prior to occupation.” The covering letter suggested that the rewording of condition 13 on the outline permission was intended to allow the issuing of the current reserved matters application approval with the provision of an upgrade to the Buckingham Water Recycling Centre to be provided by Anglian Water thereafter. A public consultation was held in relation to the section 73 application during the course of which Anglian Water raised no objection to the application. They pointed out that they would object to any discharge of condition 13 prior to an investment scheme in the Buckingham Water Recycling Centre being delivered. Approval from Ofwat was expected by them in December 2024. On 10 December 2024 the first respondent granted the section 73 application (“the section 73 permission” and a separate outline planning permission from permission number 16/00151/AOP) and, so far as relevant, the notice of decision on that application provided as follows:

“Variation of condition 13 (Foul water drainage scheme) attached to planning permission 16/00151/AOP (Outline application with all matters reserved except access for up to 170 dwellings, public open space and associated infrastructure)

AT:-

Land Off Walnut Drive And Foscoote Road Maids Moreton
Buckinghamshire MK18 1QQ

In accordance with your outline application and the plans and particulars accompanying it subject to the following conditions and reasons:-

1. Details of the appearance, landscaping, layout and scale, (herein after called “the reserved matters”) shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development should be carried out as approved.

Reason: The application is for outline planning permission.

2. Application for approval of the reserved matters shall be made to the Local Planning Authority no later than eighteen months from the date of the outline permission.

Reason: To prevent the accumulation of planning permissions: to enable the Council to review the suitability of the development in the light of altered circumstances and to comply with the provisions of Section 92(2) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

...

13. No part of the development shall be occupied until confirmation has been provided to the local planning authority that the scheme and programming of any wastewater upgrades required to accommodate the additional flows from the development have been agreed with Anglian Water; and all wastewater upgrades have been completed. The development shall be carried out in accordance with the approved details.

Reason: Network reinforcement works are likely to be required to accommodate the proposed development. Any reinforcement works identified will be necessary in order to avoid sewerage flooding and/or potential pollution incidents in accordance with policy I5 and D-MMO006 of the Vale of Aylesbury Local Plan and the National Planning Policy Framework.””

8. On 14 January 2025 the second respondent wrote to the first respondent requesting that the description of the reserved matters approval application be amended so that it read as follows: “Reserved matters being sought for appearance, landscaping, layout and scale for 153 dwellings on Land off Walnut Drive and Foscoote Road and discharge of condition 22 (biodiversity net gain) and condition 8 (CMP) of outline approval 16/00151/AOP, as varied by application 24/02780/VRC (condition 13 – Foul water drainage scheme) approved on 10 December 2024.” This amendment was accepted by the first respondent.

9. The reserved matters application was considered by the first respondent’s Strategic Sites Committee on 13 February 2025. In their report the first respondent’s officers concluded that the proposal should be approved: the reserved matters application was in accordance with the development plan read as a whole and there were no material considerations indicating a contrary decision. Within the officer’s report it was noted that condition 13 of the outline permission had required details in relation to a foul water drainage scheme for the site together with a waste water treatment capacity assessment identifying the need for any upgrades and a programme for carrying out such upgrades to accompany the reserved matters application. It further noted that the section 73 application had been submitted to vary that condition on the basis that the reserved matters scheme was not accompanied by that material. The section 73 application had varied the condition to require the necessary upgrade works to be carried out in advance of any occupation of the development so as to ensure that the development was served appropriately at the time when the requirements arose. As to the effect of the section 73 permission the following advice was provided to members in the officer’s report:

“Concerns have been raised in representations regarding the position of the outline planning consent and the subsequent Section 73 consent in respect of this reserved matters application. To assist Members in this regard, legal advice has been sought and the advice has confirmed that it is not necessary to make a fresh reserved matters application simply because there is now a new permission (24/02780/VRC). Rather, this existing reserved matters application can be considered with reference to the new Section 73 permission. This matter has been addressed in para 1.6 of the Officer’s report. The Town and Country Planning Act 1990 at Section 73 allows for conditions to an application to be varied, although applicants cannot seek to extend the time limit through this mechanism. Having regard to these matters it is considered that Officers have had appropriate regard to the Section 73 application and assessed the merits of the proposals in the reserved matters application in recommending this reserved matters application for approval. This has been confirmed as a legitimate approach

The approved S73 application is a legally valid planning permission and therefore Members are at liberty to consider the reserved matters application before them in the normal manner, having regard to the planning history.”

10. The officer's report went on to set out the detail of the discussions had with Anglian Water in relation to the upgrade of the Buckingham Water Recycling Centre and noted that Anglian Water were obliged to afford a connection to the development and accommodate it through improvement to the Buckingham Water Recycling Centre. The officers noted there was a real prospect that those upgrades would take place and that the issue would be resolved in time for the improvements to be in place prior to the occupation of the development. In the light of that position the officers noted that "there is no planning reason why the determination of this reserved matters application cannot proceed on this basis." In respect of condition 13 the officer's report noted the variation of that wording which had been approved by the section 73 application.
11. On 4 March 2025 the first respondent issued its decision notice following the committee meeting. The decision notice identifies at its head that it is related to application 23/01636/ADP. The description of the development which is being approved is as follows:

"Subsequent to your application that was valid on the 25th May 2023 and in pursuance of their powers under the above mentioned Act and Orders, Buckinghamshire Council as Local Planning Authority HEREBY GRANT APPROVAL to the access, appearance, landscaping and scale to:-

Reserved matters being sought for appearance, landscaping, layout and scale for 153 dwellings on land off Walnut Drive and Foscote Road and discharge of condition 22 (biodiversity net gain) and condition 8 (CMP) of outline approval 16/00151/AOP, as varied by application 24/02780/VRC (condition 13 - Foul water drainage scheme) approved on the 10th December 2024"
12. The approval was subject to 21 conditions seeking further detailed approvals or otherwise regulating the detailed design of the development. Condition 1 set out a list of the drawings provided as part of the reserved matters application and conditioned the development to be carried out in accordance with them. The court was provided with two of these drawings on which, amongst other detailed design proposals, details of the foul water drainage and the sewers associated with it were provided alongside other infrastructure requirements.

The Law

13. Section 57 of the Town and Country Planning Act 1990 makes it necessary for planning permission to be obtained for the carrying out of any development of land subject to the exceptions which are set out in that section. Section 70 of the 1990 Act addresses the power of a local planning authority to grant permission pursuant to an application for planning permission made to it either unconditionally or subject to conditions, or alternatively to refuse planning permission. The power to grant planning permission is said by section 70(1)(a) to be subject to other provisions including in particular sections 91 and 92. Section 91 creates a statutory condition to limit the duration of a planning permission and enables a local authority to impose an alternative time scale for the life of the permission pursuant to section 91(1)(b). Section 91(4) excludes from the operation of that section any planning permission defined as an outline planning

permission by section 92 of the 1990 Act. Section 92 defines outline planning permission in the following terms:

“92 Outline Planning Permission

(1) In this section and section 91 “outline planning permission” means planning permission granted, in accordance with the provisions of a development order, with the reservation or subsequent approval by the local planning authority, or the Secretary of State of matters not particularised in the application (“reserved matters”).”

14. Under section 92(2) default timescales are provided for the submission of an application for reserved matters approval and, thereafter, the commencement of development. Under section 92(4) it is open to a local planning authority to substitute alternative periods for those specified in section 92.
15. The development order to which section 92 makes reference is the Town and Country Planning (Development Management Procedure) (England) Order 2015. Article 2 of the 2015 Order contains a number of definitions for the purpose of interpretation. In particular, article 2 defines reserved matters and the term scale as follows:

“*reserved matters*” in relation to an outline planning permission, or an application for such permission, means any of the following matters in respect of which details have not been given in the application—

- (a) access;
- (b) appearance;
- (c) landscaping;
- (d) layout; and
- (e) scale;

“*scale*” except in the term ‘*identified scale*’, means the height, width and length of each building proposed within the development in relation to its surroundings;”

16. Section 73 of the 1990 Act enables the local planning authority to determine applications for planning permission without compliance with conditions previously attached to a prior planning permission. The terms of section 73 provide as follows:

“73 Determination of applications to develop land without compliance with conditions previously attached.

(1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

(2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.”

17. In the case of *Powergen UK plc v Leicester City Council* [2001] 81 P&CR 5 the Court of Appeal cited with approval the observations made by Sullivan J (as he then was) in his judgment in *Pye v Secretary of State for the Environment* [1998] 3 PLR 72. Sullivan J made the following observations about the effect of section 73 and the status of a planning permission granted pursuant to section 73:

“An application made under section 73 is an application for planning permission: see section 73(1). The local planning authority’s duty in deciding planning applications is to have regard to both the development plan, which brings into place section 54A, and to any other material considerations: section 70(2).

In general terms, the practical consequences of imposing a condition on a grant of planning permission must be a material consideration that a local planning authority should consider, unless prevented from so doing by some other express provision in the statutory code.

Prior to the enactment of (what is now) section 73, an applicant aggrieved by the imposition of the conditions had the right to appeal against the original planning permission, but such a course enabled the local planning authority in making representations to the Secretary of State, and the Secretary of state when determining the appeal as though the application had been made to him in the first instance, to ‘go back on the original decision’ to grant planning permission. So the applicant might find that he had lost his planning permission altogether, even though his appeal had been confined to a complaint about a condition or conditions.

It was this problem which section 31A, now section 73, was intended to address ...

While section 73 applications are commonly referred to as applications to ‘amend’ the conditions attached to a planning

permission, a decision under section 73(2) leaves the original planning permission intact and unamended. That is so whether the decision is to grant planning permission unconditionally or subject to different conditions under paragraph (a), or to refuse the application under paragraph (b), because planning permission should be granted subject to the same conditions.

In the former case, the applicant may choose whether to implement the original planning permission or the new planning permission; in the latter case, he is still free to implement the original planning permission. Thus, it is not possible to “go back on the original planning permission” under section 73. It remains as a base line, whether the application under section 73 is approved or refused, in contrast to the position that previously obtained.

The original planning permission comprises not merely the description of the development in the operative part of the planning permission ... but also the conditions subject to which the development was permitted to be carried out ...

Considering only the conditions subject to which planning permission should be granted will be a more limited exercise than the consideration of a “normal” application for planning permission under section 70, but as Keene J pointed out, at p.207 of *R v London Docklands Development Corporation, ex parte Frost* (1996) 73 P&CR 199, how much more limited will depend on the nature of the condition itself. If the condition relates to a narrow issue, such as hours of operation or the particular materials to be employed in the construction of the building, the local planning authority’s consideration will be confined within a very narrow compass.

Since the original planning permission will still be capable of implementation, the local planning authority, looking at the practical consequences of imposing a different condition as to hours or materials, will be considering the relative merit or harm of allowing the premises to remain open until, say, 10 o’clock rather than 8 o’clock in the evening, or to be tiled rather than slated.

Equally, if an application is made under section 73 within the original time limited for the submission of reserved matters, while implementation of the planning permission is still possible and is not precluded by the provisions of section 93(4), for a modest extension of time for the submission of reserved matters, the local planning authority's role in considering only the question of conditions subject to which planning permission should be granted will be more confined than in a normal section 70 case. The practical effect of submitting details one year later than would otherwise be allowed may be very limited.

In my view, however, the position is different where ... an application is made under section 73 to alter a condition, so as to extend the period for submission for reserved matters at a time when the original planning permission is no longer capable of implementation by reason of the effect of section 93(4), because time for submission for reserved matters has expired.

While the council are constrained to consider only the question of the conditions subject to which planning permission should be granted, in deciding whether to grant a planning permission subject to different conditions under paragraph (a), or to refuse the application under paragraph (b), are they required to ignore the fact that the original planning permission is no longer capable of implementation, so that if they adopt the latter course it will not be possible for the development to take place, whereas if they adopt the former course, it will be possible for the development to take place?

In my view, there is nothing in section 73 that requires the local planning authority to ignore the practical consequences generally of imposing a different condition, and this is surely a most important practical consequence of granting an application for planning permission under paragraph (a) or refusing the application under paragraph (b).

It may well be that the case since the original grant of planning permission, the arguments for carrying out development have strengthened ...

[sic. in such circumstances] Granting a planning permission subject to a condition providing for an extended period for submission of details would enable the development to be carried out, whereas as refusing the application would mean that a permission for a much needed building could not be implemented.

I do not see why, in such circumstances, the council, in considering the application under section 73, should be required to shut their eyes to those practical consequences. If that is correct, I do not see why the position should be any different if the planning policies have changed since the grant of the original planning permission so that its implementation has become less desirable in planning terms.

The local planning authority have to have regard to the factual circumstances as they exist at the time and to have regard to the facts that exist at the time of their decisions. If at that time the original planning permission is incapable of implementation by reason of section 93(4), I can see no basis in the statutory code for requiring the local planning authority to ignore that important fact.

Much less do I see any justification for requiring the local planning authority to base their decision upon a hypothesis: comparing the merits of development proceeding now with the merits of its having proceeded at some time in the past when it is known that the hypothesis does not accord with reality.”

18. Amongst the many submissions ranged against Sullivan J’s construction of section 73 advanced by Mr John Taylor QC in the Court of Appeal in *Powergen* on behalf of the appellants was the suggestion that, on Sullivan J’s approach, if there were a separate planning permission granted under section 73 it would be necessary to resubmit any details which had already been approved pursuant to conditions on the original planning permission. Schiemann LJ observed as follows in connection with that argument:

“Sometimes the alteration of a condition which is asked for will involve alterations as to previously approved details, sometimes it will not. In those cases where it does not there is no difficulty in referring to the old plans and it may well be that the authority will be inhibited by the opening words of section 73(2) from considering their merits.”

19. In *Lambeth LBC v Secretary of State for Housing, Community and Government* [2019] UKSC 33, [2019] 1 WLR 4317 the Supreme Court were also engaged with issues associated with the nature and effect of the grant of a permission under section 73 of the 1990 Act. Lord Carnwath set out the views of Sullivan J in *Pye* at paragraph 9 of his judgment noting that it had been approved by the Court of Appeal in *Powergen*. Lord Carnwath observed that in both Sullivan J’s judgment, and that of Schiemann LJ, applications under section 73 of the 1990 Act were described as being commonly referred to as applications to amend or modify the conditions imposed on a planning permission. Lord Carnwath provided the following observations in respect of that usage at paragraph 11:

“It is clear, however, that this usage, even if sanctioned by statute, is legally inaccurate. A permission under section 73 can only take effect as an independent permission to carry out the same development as previously permitted, but subject to the new or amended conditions. This was explained in the contemporary Circular 19/86, para 13, to which Sullivan J referred. It described the new section as enabling an applicant, in respect of “an extant planning permission granted subject to conditions”, to apply “for relief from all or any of those conditions”. It added: “If the authority do decide that some variation of conditions is acceptable, a new alternative permission will be created. It is then open to the applicant to choose whether to implement the new permission or the one originally granted.””

20. A little later in the judgment Lord Carnwath returned to the correct approach to the interpretation of planning permissions which had been recently canvassed in the earlier case of *Trump International Golf Club Scotland Limited v Scottish Ministers* [2015] UKSC 74, [2016] 1 WLR 85. Lord Carnwath provided the following observations in relation to the correct approach to the interpretation of a planning permission based on

the discussion in *Trump International* and the submissions which had been made in the *Lambeth* case:

“15 We have received extensive submissions and citations from recent judgments of this court on the correct approach to interpretation. Most relevant in that context is *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2016] 1 WLR 85. An issue in that case related to the interpretation of a condition in a statutory authorisation for an offshore wind farm, requiring the developer to submit a detailed design statement for approval by Ministers. One question was whether the condition should be read as subject to an implied term that the development would be constructed in accordance with the design so approved.

16 In the leading judgment Lord Hodge JSC, at paras 33—37, spoke of the modern tendency in the law to break down divisions in the interpretation of different kinds of document, private or public, and to look for more general rules. He summarised the correct approach to the interpretation of such a condition, at para 34:

“When the court is concerned with the interpretation of words in a condition in a public document such as a section 36 consent, it asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense.”

17 He rejected a submission that implication had no place in this context:

“32. [Counsel] submits that the court should follow the approach which Sullivan J adopted to planning conditions in *Sevenoaks District Council v First Secretary of State* [2005] 1 P&CR 186 and hold that there is no room for implying into condition 14 a further obligation that the developer must construct the development in accordance with the design statement. In agreement with Lord Carnwath JSC, I am not persuaded that there is a complete bar on implying terms into the conditions in planning permissions . . .

“35. . . .While the court will, understandably, exercise great restraint in implying terms into public documents which have criminal sanctions, I see no principled reason for excluding implication altogether.” _

In the instant case, had it been necessary to do so, he would, at para 37, have “readily drawn the inference that the conditions of the consent read as a whole required the developer to conform to the design statement in the construction of the windfarm”.

18 In my own concurring judgment, having reviewed certain judgments in the lower courts which had sought to lay down “lists of principles” for the interpretation of planning conditions, I commented, at para 53:

“. . . I see dangers in an approach which may lead to the impression that there is a special set of rules applying to planning conditions, as compared to other legal documents, or that the process is one of great complexity.”

Later in the same judgment, I added, at para 66:

“Any such document of course must be interpreted in its particular legal and factual context. One aspect of that context is that a planning permission is a public document which may be relied on by parties unrelated to those originally involved . . . It must also be borne in mind that planning conditions may be used to support criminal proceedings. Those are good reasons for a relatively cautious approach, for example in the well established rules limiting the categories of documents which may be used in interpreting a planning permission . . . But such considerations arise from the legal framework within which planning permissions are granted. They do not require the adoption of a completely different approach to their interpretation.”

19 In summary, whatever the legal character of the document in question, the starting point – and usually the end point – is to find “the natural and ordinary meaning” of the words there used, viewed in their particular context (statutory or otherwise) and in the light of common sense.”

21. These principles were further endorsed by the Supreme Court in the case of *DB Symmetry v Swindon BC* [2022] UKSC 33, [2023] 1 WLR 198. Lord Hodge summarised the principles in paragraph 66 of his judgment in the following terms:

“66 In *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2016] 1 WLR 85 and *Lambeth London Borough Council v Secretary of State for Housing, Communities and Local Government* [2019] 1 WLR 4317 this court has given guidance on the interpretation of planning conditions. In summary, there are no special rules for the interpretation of planning conditions. They are to be interpreted in a manner similar to the interpretation of other public documents. The court asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other

conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense. This court has rejected assertions that there can never be a term implied into a condition in a planning permission, but it has recognised that a court must exercise great restraint in implying terms into public documents which have criminal sanctions: *Trump International*, paras 33—36; *Lambeth London Borough Council*, para 18. As a planning permission is a document created within the legal framework of planning law, the reasonable reader is to be treated as being equipped with some knowledge of planning law and practice: see the judgment of the Court of Appeal delivered by Lewison LJ in the *Lambeth London Borough Council* case [2019] PTSR 143, para 52, and the judgment of Lewison LJ in the present case, para 64.”

22. The question of whether or not an application for planning permission can be amended prior to determination was considered by the House of Lords in the case of *Inverclyde District Council v Lord Advocate* [1982] 43 P&CR 375.
23. An outline planning permission had been granted to the developers for a residential development. The approval identified an area of the site which should not be developed for housing but reserved for educational, social, commercial and recreational development to be approved by the local planning authority. Subsequent landowners applied to develop 213 dwellings, that application not referring to the outline permission. The development showed the housing development as extending over the area which had been reserved for other uses. The applicants in due course appealed on the grounds of non-determination and at the subsequent inquiry the applicants offered to restrict the development to exclude the area which had been reserved for other uses. The local planning authority maintained that this second application could not be treated as a valid application for approval of matters reserved by the original outline permission.
24. The reporter at the appeal rejected that submission but noted that as an application for reserved matters it was incomplete as it did not cover all of the matters reserved by the original outline planning permission. The Secretary of State did not accept the reporter’s recommendation that as a consequence of the absence of the missing information the appeal should be refused and invited the submission of further detailed information in relation to the matters reserved by the outline permission. The local planning authority challenged this decision contending that the second application could not be a valid application for approval of matters reserved under the original outline permission because it was not within the ambit of that outline permission and did not accord with its conditions as well as seeking to depart from that permission materially.
25. In the leading speech in the House of Lords Lord Keith addressed the question of whether the Secretary of State had power to call for the submission of further plans and information in the following terms:

“Finally, it is necessary to consider the question whether it was within the powers of the first respondent to call for the submission of further detailed plans and information, which would have the effect of amending the original application, notwithstanding the expiration of the time-limit of three years imposed by condition (2) of the outline permission for the application for approval of reserved matters. This point was not specifically raised in the appellants' pleadings, nor in argument before the Second Division, nor in their written case in the present appeal. It came in the end, however, to be the mainstay of their argument. Their counsel was prepared to accept that amendment of an application must be permissible within the three-year period, considering that at any time within that period the applicant would be free to put in a fresh application. He maintained, however, that once the period had come to an end, no amendment whatever could validly be made. It is to be observed that neither in the Act of 1972 nor in the Order of 1975 is any procedure laid down for the manner in which applications of this nature are to be dealt with, apart from the provisions about entry in the register. This is not a field in which technical rules would be appropriate, there being no contested *lis* between opposing parties. The planning authority must simply deal with the application procedurally in a way which is just to the applicant in all the circumstances. That being so, there is no good reason why amendment of the application should not be permitted at any stage, if that should prove necessary in order that the whole merits of the application should be properly ascertained and decided upon. There is, however, one obvious limitation upon this freedom to amend, namely that after the expiry of the period limited for application for approval of reserved matters (which in this case was three years but which might be different-see section 39 of the Act of 1972) an amendment which would have the effect of altering the whole character of the application, so as to amount in substance to a new application, would not be competent. In this context it is to be noted that section 40(7)(b) of the Act of 1972 provides: "an application for approval of a reserved matter, if it is made after the date by which the conditions require it to be made, shall be treated as not made in accordance with the terms of the permission." This makes it clear that application for approval of *all* reserved matters must be made before the date fixed by the conditions. So an application which dealt with some only of the reserved matters could not competently”

26. The question of whether there is scope to amend an application for planning permission was further revisited in the case of *R (Holborn Studios) v London Borough of Hackney* [2017] EWHC 2823, [2018] PTSR 997 where the various authorities on this topic were drawn together in the judgment of Mr John Howell QC (sitting as a Deputy Judge of the High Court) in paragraph 65 of his judgment as follows:

“Although the relevant legislation contains no provision permitting the amendment of an application for planning permission, courts have recognised that amendments to such applications may be made. Initially the appellate committee so held in the context of an application for the approval of reserved matters that did not require public consultation: see *Inverclyde District Council v Secretary of State for Scotland* 1982 SLT 200, 204, per Lord Keith of Kinkel. Subsequently it was held that it was also possible to amend an application for planning permission, as it would not be in the public interest to deter developers from being receptive to sensible proposals for change, although the change might be so substantial that it would be impermissible even if there was consultation about it: see *R (British Telecommunications plc) v Gloucester City Council* [2002] 2 P&CR 33, paras 33—37, per Elias J. The substantive limitation on the nature of the changes that may be made by an amendment appears to be whether the change proposed is substantial or whether the development proposed is not in substance that which was originally applied for, whether or not others have been consulted about the change: see *R (British Telecommunications plc) v Gloucester City Council*, at paras 38—40; and *Breckland District Council v Secretary of State for the Environment* (1992) 65 P&CR 34, 41.”

The Grounds

27. The case before the judge below was argued on a number of additional grounds to those raised before us. It was also heard alongside a further claim brought by a separate claimant on very distinct and separate grounds. Before this court the appellant advances two grounds of appeal. Ground one is the contention that as a result of what occurred in this case there was a substantial alteration to the reserved matters application which meant that the first respondent had no power to approve it. The appellant’s argument is that since condition 13 requires details “to be submitted for approval in writing by the local planning authority in accordance with condition (1) ...” the requirements of condition 13, and all of them, are temporally linked to condition 1. The submissions which are required by condition 1 are necessarily linked in the terms of the condition to the time limit in condition 2.
28. Whilst it is accepted that condition 13 is not one of the reserved matters under the outline permission, as a consequence of the appellant’s construction of the terms of the planning permission the discharge of condition 13 is inextricably linked to the deadline for the submission of reserved matters because of the way in which the outline permission was drafted. This approach is reinforced by reference to a document called a Conditions Compliance Table referring to the application seeking to ensure compliance with condition 13. On the facts, however, the application lacked the relevant scheme of works to upgrade the Buckingham Water Recycling Centre together with a programme for those works which was specifically required by condition 13. The section 73 planning permission had as its rationale the inability of the second respondent to provide the necessary specification and programme for the upgrade works to the Buckingham Water Recycling Centre and the correspondence associated with it

demonstrated that the section 73 application was needed to “allow the current reserve application to be issued”. As a consequence the approval of the reserved matters application without the programme of necessary wastewater treatment upgrade works which were required by condition 13 has led to an approval which ignores a key part of the requirements of condition 13 on the planning permission and is therefore unlawful.

29. In response to these submissions the respondents contend that the appellant’s construction of the planning permission is incorrect. There is no basis for the contention that the requirements for details set out in condition 13 are governed by the timescales in condition 2. The first reason for this is the accepted position that details of drainage are not a reserved matter in terms of the legislative regime governing outline planning permissions. This is a position reinforced by existing authority: see *R (Murray) v Hampshire County Council* [2003] JPL 224 at paragraph 20-24 in which Burton J confirmed that drainage details were not a reserved matter for the purposes of the legislation. Furthermore, as the court concluded in the case of *Murray* at paragraph 35, the timescale in relation to the provision of the details required by condition 13 is prior to the commencement of development pursuant to the terms of condition 1.
30. The appellant also contends that the first respondent erred in law in seeking to approve reserved matters “as varied by” the permission which had been granted pursuant to section 73. The appellant contends that the acceptance of the second respondent’s request to amend the reserved matters application description to exclude the discharge of details required by condition 13 was illegitimate and an amendment which substantially altered the original basis of the reserved matters application to the extent that the first respondent lacked discretion to accept such an amendment, and that illegality infected the ultimate reserved matters approval.
31. In response to these submissions the first respondent observes that the judge made a finding of fact that there was nothing within the reserved matters application designed to discharge condition 13. Thus, firstly, no ground of appeal could lie from Lang J’s conclusion that as a matter of fact the reserved matters application was not intended, nor did it in substance seek, to discharge condition 13. That was a finding of fact which is unassailable. Secondly, there was in reality no substantial alteration to the application as a result of the change in its description and this ground must fail.
32. Turning to ground two, the appellant contends that it was unlawful, in effect, to switch the reserved matters application from one parent permission, the outline permission, to another, the section 73 permission, in particular when the timescale for submitting reserved matters under the section 73 permission had clearly expired. It was unlawful for the first respondent to consider and determine the reserved matters application “with reference to” the section 73 permission. The section 73 permission was, in accordance with the authorities, an entirely new and separate permission from the outline permission. Had the second respondent wished to discharge reserved matters under the authority of the section 73 permission it would have needed to have applied to do so but in fact the time to do so had passed.
33. In response to these submissions the respondents submit that by reference to the language, context and purpose of the relevant statutory powers it was open to the first respondent to approve the reserved matters pursuant to the subsequent section 73 permission. The language of section 92 and in particular section 92(2)(a) relates to the time for making an application for the approval of reserved matters, not the time limit

for the grant of approval of those reserved matters. That language contemplates that there might be approval of reserved matters submitted under an original outline planning permission pursuant to a subsequent section 73 permission if they remain undetermined at the time when the section 73 permission is obtained. The observations in *Powergen* in paragraph 39 support this approach to the interpretation of the legislation which, given the subject matter, should not be subject to overly technical rules. The respondent's approach is, further, consistent with the purpose of the legislation to allow for a regime in which development approved in principle can be adapted by the removal of unnecessary conditions following the making of an application of approval for reserved matters without losing the benefit of the outline permission. Finally, the respondents submit that on analysis it would be absurd to give effect to the appellant's construction which would lead a developer with no solution other than to make a fresh, full application for planning permission adding unnecessarily to costs and administrative burdens for no good reason.

Conclusions

34. The conclusions in relation to both grounds of appeal in this case depend on a proper understanding of what the documents tell the reasonable reader were the decisions which were reached by the first respondent in this case. The conclusions in relation to construction do not depend upon the intentions of either of the respondents, or what they thought was being approved. The applications and permissions in this case, as in other cases under the planning legislation, are public documents and designed and intended for use by the public and not simply the local planning authority and the developer. The principles as to the approach to construing these public documents is very well established at the highest level as the authorities set out above demonstrate.
35. The first question which arises for determination is the question of whether or not the reasonable reader would have understood that the requirements of any reserved matters application included all of the requirements necessary to discharge condition 13, and that all of those requirements were linked to and subject to the time limit contained in condition 2. I am entirely satisfied that Lang J was correct when she rejected that submission. There are numerous reasons why the appellant's construction of the planning permission, that it required the submission of the solutions to resolve the off-site foul water disposal and capacity issues at the Buckingham water recycling centre with any reserved matters application, cannot be accepted.
36. Firstly, it is uncontentious that the provision of a drainage scheme does not fall within the statutory definition of reserved matters in accordance with the legislative scheme provided for outline planning permissions which has been set out above. The five species of reserved matter created by the 2015 Order have been set out above and they are prescriptive. In this case, access was not a reserved matter, and had been applied for in detail, and reserved matters were the four aspects of design for the detailed scheme which were identified as the reserved matters within the terms of condition 1. Thus, the drainage scheme required by condition 13 was not part of the reserved matters governed by the time limit for approval contained in condition 2.
37. Secondly, the respondent's construction of the planning permission in this respect is supported by the case of *Murray* which, as set out above, settles that the provision of a drainage scheme does not fall within the scope of reserved matters for the purposes of an outline planning permission and the time limits relevant in this situation are governed

by those set out in condition 1 and require approvals to be obtained before development commences.

38. Thirdly, the reasonable reader would have concluded that condition 13 required details to be submitted as part of the reserved matters which would include foul water drainage infrastructure of the kind in fact identified on the plans which were submitted and approved by the first respondent and provided to us at the hearing. These were the necessary onsite design details for foul water collection and disposal. The offsite upgrades to the wastewater recycling centre were governed by the need for confirmation of agreement with Anglian Water prior to commencement of development. This further reinforces the conclusion that condition 13 was not governed by the time limits in condition 2. Thus, the reasonable reader would conclude that the reference to condition 1 in condition 13 is simply a cross-reference to the practical consideration that the four reserved matters to be detailed in the reserved matters application would need to take account of the necessity of a foul water drainage scheme for the site itself.
39. As a consequence of this analysis of the proper construction of the outline planning permission, it follows that the approval of the reserved matters did not involve a breach of condition 13 since the provision of all of the information to discharge condition 13 was not governed by the timescale set out in condition 2. Nor was the reserved matters application required to include all of the details required by condition 13 in order to be a valid application.
40. Whilst, as noted above, reference was made by the appellant to what is described as a conditions compliance table relevant to the reserved matters applications which includes the question of compliance with condition 13, in my view for the following reasons the reference to that document is misconceived. Firstly, we were advised at the hearing that this was an internal document held as a checklist by the first respondent. It is not, therefore, part of the reserved matters application and in any event its notes demonstrate that it is solely concerned with the onsite foul water drainage proposals submitted with the application. It is, therefore, extrinsic evidence which is of no assistance in understanding what was applied for and even if it were, it would support the contention that for the purposes of reserved matters, condition 13 simply required the provision of onsite infrastructure and nothing further. It does not support in my judgment the appellant's contention that the second respondent was applying for the discharge of condition 13 as part and parcel of the reserved matters application. Quite apart from the fact that the document did not form part of the application, the document appears to be recording whether there is compliance with condition 13 in respect of the reserved matters details rather than whether a discharge of condition 13 has been achieved. We also note that it appears the Conditions Compliance Table, albeit admitted before the judge by agreement, was in any event a document which appeared late in the day, and there was no admissible evidence before the court as to the document's status. I do not consider that this document alters the conclusions which I have reached in respect of the proper construction of the outline planning permission.
41. The next question which arises relates to the amendment to the application for reserved matters which was requested by the second respondent on 14 January 2025 and approved by the Council to add to the description of the application for reserved matters the words "as varied by application 24/02780/VRC (condition 13 – Foul water drainage scheme) approved on 10 December 2024". In the email from the second respondent's

agents requesting the amendment it was put forward on the basis simply that the addition to the description more fully and accurately described the proposal.

42. My conclusions on the issue of the amendment to the reserved matters application are as follows. The starting point for the assessment of the issue is that the application for reserved matters was at all times related to the outline permission on the reserved matters application forms of 19 May 2023 and 29 March 2024. Further the subject matter in the heading of the email of 14 January 2025 is to the original outline planning permission granted in 2023. A member of the public consulting this documentation would therefore start from the position that what was being applied for on the face of the application was the approval of reserved matters under the outline planning permission.
43. Far more important is what the reasonable reader would have concluded was the nature and effect of the document granting the reserved matters approval on 4 March 2025. The material referred to above was, after all, extrinsic to the evidence comprised in the document approving reserved matters itself. That document is headed with the reference 23/01636/ADP, namely the reference of the reserved matters application expressly specified on the application form to be pursuant to the outline planning permission. I am unable to accept the submission that the reasonable reader would have concluded that the words in the description of development “as varied by application 24/02780/VRC (condition 13 – Foul water drainage scheme) approved on 10 December 2024” had the effect of making this a reserved matters approval pursuant to the section 73 permission. Firstly, having become acquainted with the nature of the variation to condition 13 it would become apparent to the reasonable reader that it had no impact whatsoever on the merits of the reserved matters which were being approved. The change related to the timing of the provision of the offsite foul water drainage scheme and, on a proper understanding of the outline planning permission and the reserved matters approval, condition 13 was not being discharged as part of the reserved matters application (in contradistinction to conditions 22 and 8). In my view the reference to the section 73 permission is to be taken as no more than a reflection of the factual existence of section 73 planning permission. Further, having reviewed either the outline or the section 73 permission, it would be clear that the timescales for the submission of a reserved matters approval had expired. All of these matters taken together would in my judgment inexorably lead the reader to the conclusion that the reserved matters application had been made, and remained, an application for approval of reserved matters made under the outline planning permission.
44. It follows from this conclusion that whilst there was in fact a variation of the description of the reserved matters application, there was no amendment in substance. There was certainly no amendment of the application so as to make it an application for approval of reserved matters under the section 73 permission rather than the outline permission.
45. Reference was made in the course of argument to an informative contained in the document granting reserved matters approval which is in the following terms:
 - “2. This Reserved Matters permission is to be read alongside Outline permission ref: 16/00151/AOP and permission 2402780/VRC. Nothing herein contained shall be deemed to effect or vary the conditions imposed on these permissions which shall continue in full force and effect, save insofar as they

are expressly varied by any conditions imposed hereby. You are advised that Planning Obligations have been entered into in connection with this permission.”

46. On analysis the text of this informative provides no support for the contention that the reserved matters permission is properly to be construed as granting reserved matters under the section 73 permission. It is at least equally consistent with the conclusion that the document is granting a reserved matters approval pursuant to the original outline planning permission and, coupled with all of the other observations which have already been made, it is clear that the proper construction of the reserved matters approval is that those reserved matters were approved pursuant to the outline planning permission. The effect of this is that, therefore, the requirements of condition 13 as formulated in the outline planning permission remain to be discharged.
47. As an alternative submission, it was contended on behalf of the first respondent that as a consequence of reading all of the documents together, and in particular the outline planning permission, the section 73 permission and the reserved matters decision, it was appropriate to form the conclusion that the reserved matters decision was in fact granting reserved matters approval for both the outline planning permission and the section 73 permission. The document should be understood as providing reserved matters approval for both. That is a submission which I am quite unable to accept.
48. Firstly, in my view reading all the documents together, the proper conclusion is the one which I have already set out, namely that the reserved matters application, specified in the application to be for the outline planning permission and described thereafter as such subject only to the observation of a “variation” which was at best merely recording the fact of the section 73 permission, the reasonable reader would have concluded the reserved matters were approved under the outline permission. It is important to re-emphasise what was observed by Sullivan J in *Pye*, namely that whilst in statutory language and also common usage a section 73 application is described as a “variation” or “amendment” the truth is that it creates an entirely separate permission. That language is capable of being seriously misleading. The mere reference in the amendment to the description of the existence of an entirely separate planning permission was not in my judgment capable of either transferring the reserved matters application to that entirely separate permission or, alternatively, leading to the inference that permission was being granted under both the outline permission and the section 73 permission.
49. In addition to these observations based upon the proper construction of the decision notice, there are allied significant practical considerations which would deter the reasonable reader from any such understanding of the documentation. On the first respondent’s submission it would be unclear which of the permissions would be being implemented on the commencement of development. As will be evident from the facts set out above, the outline permission and the section 73 permission have different requirements in respect of when all of the requirements of condition 13 are to be satisfied. It is no doubt in the light of these practical concerns that article 6 of the 2015 Order makes clear at article 6(a) that an application for approval of reserved matters must be made in writing and “give sufficient information to enable the authority to identify the outline planning permission in respect of which it is made”. In this case, it was clear that it was the original outline planning permission in respect of which the reserved matters application was being made.

50. In the light of these conclusions the submissions which were made as to the potential for the reserved matters to be approved under the section 73 permission, on the basis that the statutory framework is to be interpreted as permitting the approval of reserved matters made in time under an earlier outline planning permission under a related section 73 permission granted after the expiration of the time limits for the submission of reserved matters, do not arise. It is unnecessary to determine whether the first respondent's submissions that such is a permissible course supported by *Powergen* are correct and I would prefer to leave them to a case which, on its facts, requires them to be determined.
51. Ultimately, the question for this court is whether Lang J was correct to order that the judicial review should be dismissed on the basis that the reserved matters application had been lawfully approved. For the reasons which have been set out above I am satisfied that the reserved matters approval was made lawfully and therefore that the appeal should be dismissed.

Lord Justice Lewis:

52. I agree.

Lord Justice Lewison:

53. I also agree.