As Approved by the Court

Lord Justice Richards :

1. This appeal concerns the grant of planning permission for the development of Cherkley Court and land on the Cherkley Estate near Leatherhead, Surrey, into a hotel and spa complex and an exclusive 18 hole golf course. The whole estate is within the Surrey Hills Area of Great Landscape Value ("the AGLV") and part of the proposed golf course is within the Surrey Hills Area of Outstanding Natural Beauty ("the AONB"). The planning permission was granted on 21 September 2012 by the local planning authority, Mole Valley District Council ("the Council"), to Longshot Cherkley Court Limited ("Longshot"). Cherkley Campaign Limited ("Cherkley Campaign") brought a claim for judicial review to challenge the grant of planning

6. The Mole Valley Local Plan ("the Local Plan"), adopted in October 2000 under the predecessor legislation, contained a section on golf courses. The section comprised "Policy REC12 – Development of Golf Courses" and supporting text (paragraphs 12.70 to 12.81), as follows:

> "**GOLF COURSES**
>
> 12.70 There are seven established golf courses in the District concentrated principally around Dorking and Leatherhead. In the Newdigate area a new course has been opened in recent years and another permitted. More generally this part of Surrey is very well served with golf courses. According to the

the countryside;

3. courses will not be permitted on Grade 1, Grade 2 or Grade 3a agricultural land;

4. the course should have safe and convenient vehicular access to an appropriate classified road. Proposals generating levels of traffic that would prejudice highway safety or cause significant harm to the environmental character of country roads will not be permitted;

5. the extent to which public rights of way are affected and whether any provision is proposed for new permissive rights of way;

6. the provision of adequate car parking which should be discreetly located or screened so as not to have an adverse impact on the character and appearance on the countryside.

In considering proposals for new golf courses, the Council will require evidence that the proposed development is a sustainable project without the need for significant additional development in the future, such as hotels or conference facilities.

Proposals for new golf courses should be designed to respect the local landscape character. New golf courses in the Surrey Hills Area of Outstanding Natural Beauty and the Area of Great Landscape Value will only be permitted if they are consistent with the primary aim of conserving and enhancing the existing landscape.

12.73 In determining proposals for golf courses and ancillary development, the Council will have regard to the Surrey County Council's guidelines for the development of new golf facilities in Surrey. Account will also be taken of the existing and proposed provision of courses in the area …."

7. Part of Cherkley Campaign's case before the judge was that the Committee majority (i) failed to apply correctly the require

> precision to enable them readily to be implemented and performance measured.
>
> 24. The written statement should also include a reasoned justification of the plan's policies and proposals. A brief and clearly presented explanation and justification of such policies and proposals will be appreciated by local residents, developers and all those concerned with development issues. The reasoned justification should only contain an explanation behind the policies and proposals in the plan. It should not contain policies and proposals which will be used in themselves for taking decisions on planning applications. To avoid any confusion, the policies and proposals in the plan should be readily distinguished form the reasoned justification (for example, by the use of a different typeface)."

12. The approach adopted within the Local Plan itself is consistent with that guidance. Paragraph 1.10 of the Local Plan states:

> "1.10 The Plan's policies are printed in bold type and boxed within a shaded background to distinguish them from the supporting text which provides a reasoned justification for each policy and indicates how it will be implemented by the Council. To interpret the policies fully, it is necessary to read the supporting text."

Policy REC12 is one of the policies there referred to: it is boxed, with a heading in bold text, to distinguish it from the supporting text.

13. The material to which I have referred indicates the relationship between Policy REC12 and the supporting text at the time when the Local Plan was adopted. But it is also necessary to take account of a subsequent change in the statutory regime. The 2004 Act introduced a new development plan making process under which local plans were to be replaced. Paragraph 1 of schedule 8 provided for a three year transitional period from 28 September 2004 after which existing local plans *ceased to have effect*, subject to a power in the Secretary of State to direct "for the purposes of such *policies* as are specified in the direction" (emphasis added) that the old policies should remain in effect until replaced by new policies. The Secretary of State made such a saving direction in respect of certain policies in the Local Plan, including "Policy REC12".

14. In the light of the above, the appellants submit that:

i) Even leaving aside the saving direction, the Local Plan contained no requirement to demonstrate need. The relevant policy was Policy REC12 and on its proper construction it contained no such requirement. Although paragraph 12.71 referred to such a requirement, the paragraph was not part of the policy and its wording was not carried through into the policy.

ii) In any event the saving direction saved only Policy REC12, not paragraph 12.71 or the rest of the supporting text; and the only relevant part of the Local

Plan that continued in force on the expiry of the three year transitional period was Policy REC12.

15. I agree with the first submission and also, subject to a qualification, with the second.

16. Leaving aside the effect of the saving direction, it seems to me, in the light of the statutory provisions and the guidance, that when determining the conformity of a proposed development with a local plan the correct focus is on the plan's detailed *policies* for the development and use of land in the area. The supporting text consists of *descriptive and explanatory matter* in respect of the policies and/or a *reasoned justification* of the policies. That text is plainly relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy. I do not think that a development that accorded with the policies in the local plan could be said not to conform with the plan because it failed to satisfy an additional criterion referred to only in the supporting text. That applies even where, as here, the local plan states that the supporting text indicates how the polices will be implemented.

17. In this case, therefore, the correct focus is on the terms of Policy REC12. That policy contains no requirement to demonstrate need. It sets out six criteria against which proposals for new golf courses will be considered, none of which relate to need. It provides in addition that the Council will require evidence that the proposed development is a *sustainable* project without the need for significant additional

N5.3(poond)-5-5.e!-1vstersTw[4(TDTw[4(b he)7.6-58.3(2.61iit))]T691ment( )-5.306ia

bare words of the policy but also any supporting text relevant to the interpretation of the policy, so that the policy would continue with unchanged meaning and effect until replaced by a new policy. The resulting position in terms of relationship between the saved policy and its supporting text is therefore the same as it was prior to the 2004 Act and the saving direction.

19. The judge took a different view of the effect of paragraph 12.71. He referred at paras 79-81 of his judgment to various competing constructions of what was saved pursuant to a direction under the 2004 Act that specified "policies" should remain in effect on the expiry of the transitional period. The first, which he rejected, was that "policies" referred only to the wording in the policy box. The second was that "policies" included any illustrative map or reasoned justification and any other descriptive or explanatory matter. The third was that "policies" had a narrow meaning, referring to the wording in the policy box, but on the basis that regard could be had to any map or reasoned justification or other descriptive or explanatory matter when interpreting or implementing the policy. He said that it probably did not matter which of the second or third constructions was correct but the third was probably to be preferred. He concluded at para 87 that the saving direction had the effect in law of preserving all the supporting text to Policy REC12, so that appropriate resort could be had to it when interpreting and applying the policy. I would reject the second construction but would accept the third construction. To that limited extent I agree with the judge. I do not agree, however, with the way in which he went on to use the supporting text in the interpretation of the policy.

20. The judge picked this point up later in his judgment, in a passage at paras 104-106 on the "efficacy of supporting text". He said there that if the second construction of the "policies" saved was correct, the supporting text would presumably stand *pari passu* with the wording in the policy box and be of equal efficacy: it was all to be treated as "policy". If the third construction was correct, so that the "policy" was the wording in the box but resort could be had to the supporting text in order to interpret the policy, the effect in law of paragraph 12.71 was in his view as follows:

> "105. In my judgment, it matters not that the wording '… *applicants will be required to demonstrate that there is a need for further [golf] facilities*" appears outside the policy box rather than inside the box. Paragraph 1.10 [of the Local Plan] provides a perfectly rational explanation for the role of the "*supporting text*" outside the box, namely to provide a "*reasoned justification*" for the policies and indicate "*how*" policies will be implemented by the Council, and further states that it is necessary to read the "*supporting text*" in order "*to interpret the policies fully*". It matters not that the requirement to demonstrate "*need*" could equally well have featured in the box and that given the strictures of paragraph 24 of Annex A of PPG12 (that "*the reasoned justification … should not contain policies and proposals that will be used in themselves for taking decisions on planning applications*") it might have been preferable if it had. It also matters not that Policy REC12 might have been more conventionally drafted …. Reading the wording inside and outside the box as a whole, the intention of

> the framers of the policy is clear: given (a) the apparent sufficiency of golf courses in this part of Surrey and (b) the need to protect the special landscape of the Surrey Hills *etc.*, applicants will have to demonstrate a "*need*" for further such facilities and proposals for new golf courses will be considered against certain listed criteria. As stated above, in the light of (a) and (b), it might reasonably be said that the requirement to demonstrate the "*need*" for further such facilities is simply making explicit what is implicit."

21. It should already be clear why I disagree with that reasoning. The policy is what is contained in the box. The supporting text is an aid to the interpretation of the policy but is not itself policy. To treat as part of the policy what is said in the supporting text about a requirement to demonstrate need is to read too much into the policy. I do not accept that such a requirement is implicit in the policy or, therefore, that paragraph 12.71 makes explicit what is implicit. In my judgment paragraph 12.71 goes further than the policy and has no independent force when considering whether a development conforms with the Local Plan. There is no requirement to demonstrate need in order to conform with the Local Plan either in its original form or as saved.

22. It is true that the Council proceeded in practice on the basis that there was a policy requirement to demonstrate need. That was because the officers' report, by reference to the supporting text in paragraph 12.71, treated Policy REC12 as imposing such a requirement. As regards the application of the test, the officers' view was that there was no proven need for additional golf facilities. The majority of the Committee, however, took a different view on that issue. Their summary of reasons for the grant of planning permission included the statement that "the terms of Mole Valley Local Plan policy REC12 and its supporting text were considered to have been met in that a need for the facilities had been demonstrated …". I will come back to this later. For present purposes it suffices to say that if on the proper interpretation of Policy REC12 there was no requirement to demonstrate need, nothing turns on the fact that the Council proceeded on the basis that there was such a requirement but concluded that it was satisfied.

23. The judge records at para 53 of his judgment that it was initially accepted by all parties at the permission hearing and on the first day of the substantive hearing before him that Longshot had to demonstrate a need for further golf facilities in the particular location pursuant to Policy REC12 and that the issue was simply whether the Council had properly interpreted the requirement of need in this context and whether such a need had reasonably been identified. But Mr Katkowski QC, counsel for Longshot, "pulled a couple of surprise clubs out of his bag" on the second day of the substantive hearing and sought to argue that (1) the requirement in paragraph 12.71 to demonstrate need amounted to "policy" rather than "reasoned justification" and accordingly fell foul of paragraph 24 of Annex A to PPG 12 (see para 10 above) and was unlawful and of no effect, and (2) paragraph 12.71 had not been, and was not capable of being, saved by the Secretary of State's direction and therefore no longer existed in law. Mr Findlay QC, for the Council, adopted both of Mr Katkowski's new submissions. They were strongly resisted by Mr Edwards QC on behalf of Cherkley Campaign. In the event neither submission commended itself to the judge. The first submission has not been renewed before us. The second has been renewed, in part at

least, and has been considered above. It seems to me, however, that the way in which the case was argued before the judge distracted attention from the fundamental question whether Policy REC12, properly interpreted with due regard to the supporting text, required need to be demonstrated. That question was central to the argument before us; and for the reasons I have given I would answer it in the negative.

24.

sense. ‘*Need*’ does not simply mean ‘*demand*’ or ‘*desire*’ by

community as a whole" he adopted an unduly exacting and narrow interpretation of that statement. The word "need" has a protean or chameleon-like character, as Mr Findlay and Mr Katkowski respectively submitted, and is capable of encompassing necessity at one end of the spectrum and demand or desire at the other. The particular meaning to be attached to it in paragraph 12.71 depends on context. The first and most obvious point to make about context is that Policy REC12 itself contains nothing to support the judge's exacting interpretation. The policy's requirement of evidence that the proposed development is a "sustainable" project without the need for significant additional development in the future is more consistent with a meaning at the other end of the spectrum, i.e. that there is sufficient demand for the project to be sustainable. The policy's reference to a primary aim of conserving and enhancing the existing landscape does not take this point any further. As to the immediate context provided by paragraphs 12.70 to 12.72, the most relevant consideration is the statement in paragraph 12.70 that "According to the recognised standards of provision there is no overriding need to accommodate further golf courses in the District". The point there being made appears to be that there is no necessity for further golf courses. But the very fact that, against that background, paragraph 12.71 leaves it open to applicants to demonstrate a need for further facilities suggests that "need" is being used in a different and less exacting sense in paragraph 12.71. Overall I take the view that if any need requirement is to be read into the policy by reference to paragraph 12.71, "need" is to be understood in a broad sense so that the requirement is capable of being met by establishing the existence of a demand for the proposed type of facility which is not being met by existing facilities.

29. In making his finding as to meaning the judge placed emphasis on the general context, namely "the broad horizon of planning law itself" and the fact that "the *raison d'etre* of planning law is the regulation of the private use of land in the public interest" (para 96 of his judgment). He referred back to para 2, where he said this:

> "… The developer argued that proof of private '*demand*' for exclusive golf facilities equated to '*need*'. This proposition is fallacious. The golden thread of public interest is woven through the lexicon of planning law, including into the word '*need*'. Pure private '*demand*' is antithetical to public '*need*', particularly very exclusive private demand. Once this is understood, the case answers itself …."

Thus his reasoning appears to have been that because planning control is exercised in the public interest, "need" must relate to the interests of the public and/or the community as a whole. I respectfully disagree with that reasoning. I see no reason in principle why a planning policy should not lay down a requirement of need which is capable of being met by a private demand for the facility in question, including a demand that arises outside the local community or area, as in the case of an elite facility catering for a national or even global market. It is not inimical to the philosophy of planning law to lay down such a requirement.

30. Accordingly, I accept the case for the appellants that if, contrary to my primary finding, Policy REC12 is to be read as containing a need requirement, it was an unexacting requirement and was capable in principle of being met by demonstrating an unmet demand for an elite facility of the type proposed.

Whether the Council's conclusion on need was rational

31. The officers' report informed members of the Committee that there was sufficient capacity in existing golf courses to provide for new members wishing to play the sport locally. It went on to explain that the proposed development was targeting the very highest end of the golf market, with exclusive membership sold at a cost that reflected the 5 star facilities. The applicant did not see it as competing for membership with surrounding 2, 3 and 4 star courses. Its financial model included a significant proportion of membership coming from overseas customers who would also use the hotel, and there was already a waiting list of prospective members. The report continued:

> "The applicant argues that need is not an issue and that they are operating within a very specific range of the golf market. Policy REC12 does not draw a distinction between different categories of golf provision. It was written to protect the countryside, particularly sensitive landscapes such as Cherkley, from a proliferation of golf courses. The issue of need is therefore relevant whatever the golf model and market being targeted.
>
> There is no proven need for additional golf facilities from the information available to the Council and the applicant has not indicated otherwise, other than to state that they can sell their product to a targeted market. It might, in any case, be reasonable to judge that the 'high end' market could be catered for in a less sensitive location or where there is an existing ailing course that can be reinvigorated to provide the sort of facilities and course that the membership would be seeking but in a less sensitive location."

32. That passage is far from clear. Whilst saying that there is no proven need for

be safeguarded even within and adjacent to the Area of Outstanding Natural Beauty …."

34. At paras 118-121 of his judgment the judge found that in that passage the majority of the Committee had failed properly to interpret or understand the true meaning of the word "need" and had misdirected themselves in law in various respects. At para 122 he found that in any event the majority's decision to grant planning permission for further golf facilities at Cherkley was perverse; it simply "*does not add up*"; there was no evidence upon which the majority could properly base a conclusion that there was a need "in the public interest sense" for further golf facilities in this part of Surrey.

35. Those findings were all based on a view as to the meaning of "need" with which, as indicated above, I disagree. If in this context "need" has the broader meaning that I favour, so that it can in principle be demonstrated by evidence of an unmet demand for the type of facility proposed, then in my view the summary of reasons given by the majority of the Committee for finding that need had been demonstrated discloses no error of law and the finding itself was reasonably open on the material available to members. I do not accept submissions by Mr Edwards that the reasons simply fail to address the question of need for a further facility or that they wrongly equate need with viability or sustainability. I also reject his submission that the material before the Committee, which included Longshot's planning statement and briefing note, provided insufficient evidence of unmet demand to enable the majority rationally to conclude that need had been demonstrated. I concentrate on the material before the Committee because that is clearly the basis on which the rationality of the majority's conclusion must be assessed. A further, though minor, concern about the judge's analysis is that he had regard to material that was not before the Committee (see para 111 of his judgment).

The issue of "directing away"

36. A separate issue arising in relation to the Local Plan concerns the statement in paragraph 12.72 that future golf course proposals "will be directed away" from the AONB and AGLV. The judge stated at para 126 of his judgment that this was expressed in "unequivocal mandatory terms" and was a requirement and, moreover, a -dc,at iivoo9heco7(s"erns(")-9(id7(s"ere) -1.8(o9h)-avo)s)6..7(s")]7.2(m) He wo0h2(m)1o s(")-9(ahe 3.

courses be directed away from the AONB and AGLV. Policy REC12 includes no such requirement, and no such requirement can be read into it by reference to the supporting text: on the contrary, Policy REC12 contemplates that new golf courses can be permitted in those areas "if they are consistent with the primary aim of conserving and enhancing the existing landscape". Paragraph 12.72 had no independent policy status even in the Local Plan as originally drafted, and in any event only Policy REC12 itself was saved by the saving direction under the 2004 Act.

38. I accept those submissions, for essentially the same reasons as I have accepted the appellants' submissions to the effect that there was no requirement to demonstrate need. I take the view that "directing away" was not a policy requirement of the Local Plan and that in the absence of a policy requirement the reference to it in paragraph 12.72 did not convert it into a material consideration. Policy REC12 contained provisions aimed specifically at the protection of the landscape. In my view those provisions were taken properly into account by the majority of the Committee, as will be explained when I move to the main landscape issues. No eo8aan rcr72 ha nto6a-5.3(7v5.3(7v5.3(7v5.c

38. [illegible]

The Committee was mindful that a management plan will be prepared to integrate all the management provisions, from

nevertheless took the view that the golf course as a whole was a "major development" to which paragraph 116 of the NPPF applied and that it was therefore subject to the tests of exceptional circumstances and public interest contained in that paragraph. His reasons were these:

> "147. … Paragraph 116 of the NPPF is plainly intended to include '*major developments*' which physically overlap with designated areas or visually encroach upon them. In the present case, it would be artificial, and frankly myopic, to focus simply on the one tee and hole physically within the curtilage of the AONB and ignore the other 17 tees and holes course along the border of the AONB. It would also be contrary to the spirit of Section 11 of the

within the NPPF. It was therefore implicit that the officers considered the proposal to involve a major development in the AONB. In those circumstances it would have been helpful if the summary of the majority's reasons had indicated the basis on which the views of officers on this issue were rejected, but it was in my judgment legally sufficient to state the majority's conclusion that the development was in conformity with the NPPF. In any event nothing can turn on the omission to refer specifically to paragraph 116 if, as I consider to be the case, that paragraph was not reasonably capable of applying.

Whether the conclusion in relation to landscape character was rational

46. The judge held at para 155 of his judgment that the conclusion of the majority of the Committee that the overall landscape character "would not be compromised" was irrational. He said that it flew in the face of "the unanimous and trenchant views" expressed by the landscape experts that the effects would be "major … adverse, long-term and permanent" and the changes were "of such magnitude" that the landscape character would be "fundamentally, and probably irreversibly, altered"; and that the planning officers also advised unequivocally that the proposals would be "seriously detrimental" to the visual amenity.

47. It is common ground that the threshold of irrationality is a high one: counsel referred in this respect to *R v Secretary of State for the Home Department, ex parte Hindley* [1998] QB 751, 777A, to which the judge also referred at para 42 of his judgment.

48. The court will be particularly slow to make a finding of irrationality in relation to a planning judgment of this kind, especially when the members who made the judgment had the benefit of a site visit whereas the court has to work on the written material alone. In this case, moreover, the importance of the site visit is emphasised by the fact that temporary scaffolding had been erected to outline the position of the proposed clubhouse, so that members could assess the impact of the building in the wider landscape. It is also worth noting that in addition to a well attended Committee site visit some members had visited the site individually.

49. The judge evidently felt able to form the view he did on the basis of the written material because he considered that the expert evidence and officers' advice were unequivocally to the effect that the development would be harmful to the landscape. The members were of course not bound by the opinions of experts or officers. In any event, however, in the light of passages drawn to our attention by Mr Findlay and Mr Katkowski I do not accept that the expert evidence and officers' advice all pointed in the one direction. There was certainly a body of evidence that the development would be harmful to the landscape, but there was also evidence the other way and it was recognised in the officers' advice that there was a balance to be struck.

50.

> "6.65 Views to the application site from publicly accessible places are very limited restricted by topography, intervening woodlands and mature hedgerows. There are a limited number of properties in Tyrrell's Wood and Yarm Way which have direct views of the application site. Of the eleven representative viewpoints, the residual visual impacts are **Long-term local Minor Beneficial.**
>
> 6.66 The application site lies with[in] the Green Belt, the Surrey Hills AONB and Area of Great Landscape Value. The proposed golf course will enhance the landscape character of the area with opportunities for woodland management and the creation of extensive areas of species rich grassland as well as the opening of distant views out of the application site from public rights of way and improved access. The residual landscape impacts are considered to be **Long-term, Local Minor Beneficial.**
>
> 6.67 The proposed golf course and club house will not result in any significant adverse landscape and visual impacts during the day or from light spill during the night, and complies with the overarching aim of the AONB policy to conserve and enhance …."

51. A briefing note for members, dated April 2012, asserted that "Overall, the impact of the formal golf features will not be sufficiently dominant to cause a material change to the landscape character in any of the distant views to the site"; the course would be of natural appearance "enhancing the visual appearance of the landscape"; "The overall landscape character of this private estate will improve with the present open areas of agricultural uniformity enclosed by neglected woodlands, becoming a richer and subtly varied grassland mosaic"; and in relation to the area outside the AONB "the resulting landscape character will be closer in appearance to that of the adjacent AONB".

52. It is right to say that the views expressed in the environmental statement and the briefing note were challenged by others, including the Council's own independent landscape consultant (and the fact that the Council was not prepared to accept the views in the environmental statement but took external professional advice of its own was a factor stressed by Mr Edwards in argument). These matters were discussed at length in a section of the officers' first report on "Landscape implications of the proposed development". But the officers' analysis did not present the evidence as all pointing in one direction. It stated, for example, that "*on balance* the proposals do not enhance the landscape" (emphasis added). The existence of a balance, but at the same time a firm indication that the balance is considered to come down against the proposed development, is also apparent from the summary at the end of the section:

> "There are undoubtedly landscape benefits to be achieved from the proposed development and there is a commitment to manage the components of that landscape in appropriate ways. However, the price to be paid is the imposition of a golf course on over 40% of the open parkland, with all the artificial

> 88. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by way of inappropriateness, and any other harm, is clearly outweighed by other considerations.
>
> 89. A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:
>
> - ...
> - provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;
> - the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
> - …."

58. At the time of the officers' first report the relevant provisions were contained in Planning Policy Guidance 2 ("PPG2") in materially the same form, save that PPG2 referred to "essential" facilities for sport and recreation rather than to "appropriate" facilities, the term used in paragraph 89 of the NPPF.

59. Section 11.2 of the first report contained a lengthy discussion of the Green Belt issues. It explained that the proposed golf course was *not* considered inappropriate development as it preserved the openness of the Green Belt. The focus was therefore on the buildings. The clubhouse was considered to be acceptable because it provided essential facilities ancillary to the golf course. Certain of the other elements of new build, in particular those involving extensions to existing buildings or the re-use of the floorspace and volume of buildings for which there were extant permissions, were considered to be acceptable either because they were appropriate development which did not have a detrimental impact on the Green Belt or because there were sufficient very special circumstances to justify what was otherwise inappropriate development in the Green Belt. In relation to certain other elements of new build, however, the officers' view was that they would represent inappropriate development and that there were insufficient very special circumstances to justify them. The flavour of that part of the advice is apparent from the following extracts from the report:

> "The other buildings including the partly underground swimming pool, the underground spa and the partly underground maintenance/service hub buildings are also new development in the Green Belt which is, by definition, harmful to the Green Belt.

> … Whilst the spa would be underground and would therefore have a limited impact on the Green Belt in terms of its built form, it is of a considerable size and would generate a significant amount of activity. The application details that the spa would be available for use by members of the health club, the Golf Club, hotel guests and members of the public by appointment so there would be a considerable amount of use of the spa that would not be associated with the hotel. As such, it is considered that its size and use mean that it would not be ancillary to the hotel.
>
> With regard to the maintenance facility and service hub building, again, this is not a small building and is not solely related to the golf course use. It would have a dual use of servicing all of the uses on site – the hotel, the spa/health club and the cookery school, in addition to the golf course. It is therefore necessary to see if any very special circumstances have been advanced to offset the harm caused to the Green Belt.
>
> …
>
> Despite the spa's position underground, it is considered that the activity associated with the spa and swimming pool in the Green Belt would be harmful to openness, especially in an area that is isolated and where people would have to rely on the private car rather than public transport to access the site. The new build elements are inappropriate development that is harmful to openness. It is considered that there are insufficient very special circumstances to justify these elements of new development in the Green Belt and as such they fail Green Belt policy tests in PPG2. The golf course maintenance facility and service hub building will have a dual use, and whilst accepting that the service hub element will help to minimise the movement of vehicles around the site, it is considered that this element of the proposal is not genuinely ancillary to the golf course and therefore fails the PPG2 policy test with regard to essential facilities."

All this was reflected in the third reason given for the officers' recommendation that permission be refused:

> "The proposal involves new buildings in the Green Belt including a partly underground indoor swimming pool, an underground spa and a partly underground maintenance facility. These buildings, together with the activity generated by the proposed uses, would represent inappropriate development in the Green Belt, in conflict with the aims of PPG2. There are considered to be no very special circumstances advanced that clearly outweigh the harm caused

> by reason of inappropriateness and the level of activity generated by the proposed development …."

60. The officers' second report drew attention to the publication of the NPPF and to the provisions in it concerning the Green Belt but indicated that it did not alter the advice given in the first report.

61. The summary of reasons given by the majority of the Committee for granting the planning permission included the following passage in relation to the Green Belt policies:

> "The development was considered not to compromise significantly the Green Belt policies contained in the NPPF and the Council's Core Strategy by: re-using existing buildings, utilising floorspace granted under previous, extant permissions and locating additional floorspace underground. The design of the development in terms of siting, scale and detailing was considered to retain substantially the openness of the site sufficiently to overcome concerns set out in the officers' report, having regard to the other benefits that would be achieved."

The concluding paragraph of the reasons is also relevant:

> "Having considered all of the material considerations and objection to the development and the officers' concerns as expressed in their reports, the Committee concluded that, when balancing all of the issues, the development would achieve sufficient economic benefits and contained adequate environmental safeguards, having regard also to the conditions set out in the decision notice and to the Section 106 Agreement, to outweigh any concerns."

62. The judge dealt with this issue at paras 170-195 of his judgment, including his analysis at paras 185-195. He thought it clear that the majority of the Committee had failed to apply the "very special circumstances" test when deciding that the Green Belt policy had not been breached. He said that the test did not feature either

development, including economic benefits in the form of jobs for local people and accommodation and facilities for visitors to the district. It was open to the members to place weight on such benefits when deciding whether there existed very special circumstances sufficient to justify approval of the inappropriate development. To describe the reference to other benefits as at best a fig-leaf attempt to justify an overall planning decision is unfair. I can see no legal error in the majority's approach to these matters, and the conclusion they reached cannot in my judgment be said to have been irrational.

Reasons

66. As the judge explained at paras 204-206 of his judgment, failure to give adequate reasons was not pursued as a separate ground of challenge before him but was an aspect of the case advanced by Cherkley Campaign under each of the other grounds of challenge. The judge found that the reasons for granting permission were inadequate in respect of the three grounds considered above (need, landscape impact and Green

(Amendment) Order 2013. But the requirement was in force at the time of the decision here in issue and nothing turns on its subsequent repeal. Both *Telford* and *Scottish Widows* serve to illustrate, however, the limited nature of the requirement while it was in force.

70. Mr Edwards also drew attention to the requirement under regulation 24(1)(c)(ii) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 that where an EIA application is determined by a local planning authority the authority shall make available for public inspection a statement containing *inter alia* "the main reasons and considerations on which the decision is based". He did not contend, however, that this imposed a higher duty than the duty to give a summary of reasons under the general planning legislati