Quod

Land to the rear of the Hollies Nursing Home, Burghfield Common

(PINS REF: APP/W0340/W/22/3312261)

Rebuttal Proof of evidence of Sean Bashforth on Planning Matters *(for AWE plc and the Ministry of Defence)*

24 MAY 2023

Q230344

Contents

1 Introduction

1.1 I have prepared this rebuttal evidence on behalf of AWE/MOD in response to the evidence of Ms Katherine Miles acting on behalf of the Appellant.

1.2 Consistent with the scope of my original evidence, I focus primarily on planning policy and the overall planning balance. Other witnesses for the AWE/MOD respond on safety risks and the impact on the operation of AWE B.

1.3 References to proofs of evidence are in the form of individuals initials and the paragraph number, with KM4.56 for instance referring to paragraph 4.56 of Ms Katherine Miles' proof of evidence.

1.4 For the avoidance of doubt, I continue to rely upon my main proof of evidence (11 May 2023) and AWE/MOD's other evidence. I do not seek to deal with each and every point of disagreement in this rebuttal. Such points will be dealt with at the public inquiry in the usual way. I simply identify those points where I consider it may assist the Inspector to have a response in writing on behalf of AWE/MOD before the start of the inquiry.

2 Policy and the planning balance

Adopted Policy

2.1 There is disagreement between the parties about the approach to adopted Policy CS8 which is cited in Reason for Refusal (RfR) 2.

2.2 Like the Council's witnesses, I consider that adopted Policy CS8 (Nuclear Installations – AWE Aldermaston and Burghfield) needs to be read in the context of the larger Inner Land Use Planning Consultation Zone in the post 2019 REPPIR DEPZ. I consider that the first part ('**Limb 1**') of Policy CS8, which states as follows, is engaged and should be given substantial weight for the reasons explained in my evidence (SB6.2):

"In the interests of public safety, residential development in the inner land use planning consultation zones of AWE Aldermaston and AWE Burghfield is likely to be refused planning permission by the Council when the Office for Nuclear Regulation (ONR) has advised against that development…"

2.3 The Appellant's approach is that there is no mechanism to enable the zones to be updated in the Core Strategy and it will be for the new local plan to consider (KM4.12 to KM4.18). KM4.20 states that, on the basis of the evidence of Dr Pearce, the proposals do not conflict with Policy CS8. This appears to be because of the Appellant's literal reading of the Local Plan; where the site falls beyond the inner zone on the adopted proposals map thereby engaging the second part ('**Limb 2'**) of Policy CS8 which states as follows:

'….All other development proposals in the consultation zones will be considered in consultation with the ONR, having regard to the scale of the development proposed, its location, population distribution of the area and the impact on the public safety, to include how the development would impact on "Blue Light Services" and the emergency off site plan in the event of an emergency as well as other planning criteria…'

2.4 I maintain my view that Limb 1 of Policy CS8 is engaged because the policy must be read with the supporting text, including paragraph 5.44 which acknowledges that '*the consultation zones may change'*.

2.5 It is my view, and that of the Council's planning witnesses, that Policy CS8 needs to be applied in the context of the revised inner consultation zone. That approach takes into account the important change to the safety context and the underlying purpose of the policy as explained in my main Proof of Evidence.

2.6 I understand that there is various case law which confirms the approach to interpreting planning policy. I enclose in the Appendix a copy of *Corbett v Cornwall Council* [2022] EWCA Civ 1069 which contains a helpful summary of the relevant principles at paragraph 19 (particularly 19(2)):

"Unduly complex or strict interpretations should be avoided. One must remember that development plan policy is not an end in itself but a means to the end of coherent and reasonably predictable decision-making in the public interest, and the product of the local planning authority's

own work as author of the plan. Policies are often not rigid, but flexible enough to allow for, and require, the exercise of planning judgment in the various circumstances to which the policy in question applies. The court should have in mind the underlying aims of the policy. Context, as ever, is important…"

2.7 I note that the Inspector in the Kingfisher Grove Case exercised his judgment taking the revised safety context in that case. As noted in paragraph 64 of that appeal decision, that Inspector noted the general principle of that policy continuing to apply:

64. Core Strategy Policy CP17 provides housing figures based on the South East Plan which is no longer in force. Accordingly, Core Strategy policies CP9 and CP11, MDD Policy CC02, and Neighbourhood Plan Policy 1, which apply development limits throughout the borough, are out of date because these are based on out-of-date housing numbers, to which I give significant weight. A further out-of-date policy is MDD Policy TB04 which deals with development around the AWE Burghfield Site, due to the use of superseded measurements for the DEPZ radius, but as the general principles still apply only minimal weight is apportioned to this conflict. [My emphasis]

2.8 Even if the Appellant's approach is followed, I consider that the outcome would be the same and planning permission should be refused because the proposals would also be contrary to Limb 2 of Policy CS8 and other material considerations.

2.9 Limb 2 of Policy CS8 also requires consideration of the ONR's views when having regard the impact on public safety, albeit there is not a presumption against new residential development as per Limb 1. In this case, ONR's response goes beyond just straight forward 'advise against' and they have felt it necessary to present evidence at this inquiry and have that found that '*there is insufficient evidence from testing and regulatory engagements to demonstrate that AWE (B) OSEP can tolerate further development in the DEPZ*' [1]. The evidence of ONR, and support for their advice against granting permission, is also backed up by concerns from those with the most detailed knowledge and expertise about safety matters at AWE B (the Council's Emergency Planner and AWE/MOD). As explained in my evidence, the views of these parties should be given significant weight against the proposals.

2.10 In considering the proposal's impact on safety and blue light services, analysis against Limb 2 would also need to take into account the Appeal Site now falling within the enlarged DEPZ and its equivalence to the inner (highest risk) zone listed in Policy CS8. Limb 2 focusses on the effectiveness of the off-site plan and the now enlarged DEPZ identifies the extent of that plan. Taking this into consideration along with broader evidence about the risks associated with the immediate response to an emergency and the subsequent recovery period, I believe that the evidence from AWE/MOD and the Council shows that the proposals would have an impact on public safety and the emergency plan (including blue light services) and would be contrary to Limb 2 of Policy CS8.

2.11 I therefore disagree with the Appellant's statement at that the '*development plan is up-to-date and the appeal proposals accords with it'* (KM4.75). For the reasons expressed, the proposals do not accord with Policy CS8 however interpreted and should be refused planning permission.

[1] Paragraph 48 of Mr Eamonn Guilfoyle's Proof of Evidence on behalf of the ONR.

2.12 I also do not understand how the plan, particularly the housing site allocation, can be described as up to date and be given full weight (KM4.48). The main policy on nuclear safety (CS8) needs to be read in a significantly changed safety context. In parallel with this, it is necessary to re-evaluate the weight to be given to the HSA16 housing site allocation where material considerations post-dating the adoption of the plan relating public safety must cause the re-evaluation of the suitability of the allocation for housing.

2.13 For the reasons explained in my evidence (SB3.9), I consider that the changed safety position means that when the plan is read as a whole, it would be consistent for the site allocation to be given limited weight.

Safety matters in the planning balance

2.14 In SB 6.4.3. I explain why significant weight must be given to the views of the ONR who have advised against both in its role the UK's nuclear safety regulator and as the safety regulator for AWE B. As explained above, however Policy CS8 is interpreted, if the ONR advises against granting permission there is either a presumption against housing and permission should be refused (Limb 1) or, the view of the ONR needs to be taken into account as part of an assessment of the risks to public safety and the emergency plan (Limb 2). Given the nature of ONRs objection this should be given significant weight even when considered against Limb 2 of Policy CS8.

2.15 I recognise that there are benefits associated with the provision of housing. Whether this is attributed minor or moderate weight, I consider that this is clearly outweighed by the safety concerns and potential impacts on the operation of AWE. The housing is, at most, of local importance[2]. However, the safety and continuing operation of AWE is of national strategic importance to defence and national security (See SB2.4). Even small risks to that operation arising from development nearby should be attributed significant weight which would far outweigh housing provided in the Appeal Scheme.

Impact on AWE B

2.16 KM6.5 states that AWE consider that the 32 dwellings would threaten the operation of AWE B because AWE B itself '*poses a risk to the life of persons*'. I can find no reference to such a position in AWE/MOD's statement of case nor in its evidence.

2.17 KM6.6 to 6.9 then seeks to suggest that the recent MMF development at AWE B, approved after REPPIR 2019 regulations, would not change the safety position. This is a misleading characterisation of the impact on AWE B for two reasons.

2.18 First, the MFF is located off the nuclear licensed site and does not change the REPPIR position for AWE B.

2.19 Second, the MMF only forms one small part of the planned investment at AWE B. The main MENSA replacement warhead facility is still under construction (see SB2.11) and other planned changes shown in the SCDP Illustrative Framework Plan (see page 32 of my Appendix 1) are

[2] Albeit as explained in my main proof evidence (SB6.6) it is not essential for the delivery of the local plan housing targets with the Council performing well on housing delivery and its 5 year housing supply.

within the licensed nuclear site and therefore have the potential to change the REPPIR related safety position.

2.20 Detailed activities within current and future buildings at AWE B will evolve over time to respond to the MOD's demands to support the Continuous at Sea Deterrence (CASD) subject to regulatory approvals.

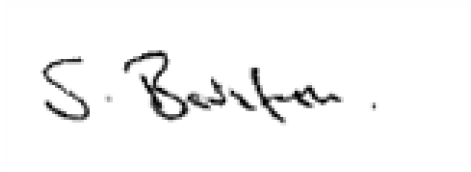
2.21 The concern for AWE/MOD is that additional people within the DEPZ could render the Off-Site Emergency Plan inadequate resulting in AWE or its regulators to limit activities, impose additional controls on them or potentially seek changes to the form of physical structures e.g. additional engineered safeguards to limit risk. Given that AWE B is the only site able to fulfil its unique function, such constraints could fundamentally undermine the ability of AWE B to deliver the UK's effective CASD.

2.22 It is because of factors like these that a precautionary approach is needed and why, consistent with REPPIR 2019, safety risks need to be kept under review, e.g. through the publication of an updated Off Site Emergency Plan every 3 years.

3 Declaration

The evidence which I have prepared and provide for this planning appeal in this proof of evidence is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

Dated: 24 May 2023



Sean David Bashforth
Senior Director

APPENDIX: *Corbett v Cornwall Council* [2022] EWCA Civ 1069.

Neutral Citation Number: [2022] EWCA Civ 1069

Case No: CA-2021-001629

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT
MRS JUSTICE JEFFORD
[2021] EWHC 1114 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 July 2022

Before:

SIR KEITH LINDBLOM
(SENIOR PRESIDENT OF TRIBUNALS)
LORD JUSTICE MOYLAN
and
LORD JUSTICE STUART-SMITH

- -

Between:

WILLIAM CORBETT	**Appellant**
– and –	
CORNWALL COUNCIL	**Respondent**
– and –	
DYMPNA WILSON	**Interested Party**

- -
- -

Richard Humphreys Q.C. (instructed by **TLT Solicitors LLP**) for the **Appellant**
Sancho Brett (instructed by **Cornwall Council**) for the **Respondent**

Hearing dates: 22 June 2022

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Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email and released to The National Archives. The date and time for hand-down is deemed to be not before 4pm on Wednesday 27 July 2022.

The Senior President of Tribunals:

Introduction

1. In this case a local planning authority granted planning permission for a dwelling-house to be built on land connected by a drive to a road which runs past existing buildings in a hamlet in north Cornwall. It accepted that the proposal complied with a policy of the local plan permissive towards housing development "immediately adjoining" settlements. Did it apply that policy lawfully, having understood it correctly? The judge in the court below held that it did, and, as I shall explain, in my view she was right to do so.

2. With permission granted by Lord Justice Lewison, the appellant, William Corbett, appeals against the order of Mrs Justice Jefford, dated 17 June 2021, dismissing his claim for judicial review of the planning permission granted by the respondent, Cornwall Council, on 3 February 2020 for the construction of a dwelling-house and garage at Beacon House East, Trevarrian. Trevarrian is a hamlet to the north of Newquay and south of Mawgan Porth, near the north coast of Cornwall. Dympna Wilson, the applicant for planning permission and owner of the land on which the development was proposed, is the interested party. She has taken no active part in the proceedings, here or below. At the hearing before the judge, Mr Corbett appeared as a litigant in person. Before us, he was represented by leading counsel.

The issues in the appeal

3. There are two issues in this appeal. First, did the council misinterpret and misapply Policy 3 of the Cornwall Local Plan, in particular the concept of development "immediately adjoining" a settlement, so that its decision to grant planning permission was flawed by an error of law? Second, did it take into account what is said to have been an irrelevant consideration, namely the "functional" relationship between the proposed development and the settlement?

The proposed development

4. As described in the application for planning permission and in the council's decision notice, the proposed development was the "Construction of Dwellinghouse and garage accommodation". It would replace an existing garage, store and utility room within the curtilage of Beacon House East, to the west of the road known as Trevarrian Hill or "the coast road" and within the Watergate and Lanherne Area of Great Landscape Value. Beacon House was built in the 1840s, and subsequently divided into Beacon House East and Beacon House West. Access to it is gained by a drive from Trevarrian Hill, about 60 metres long. As the judge said (in paragraph 2 of her judgment), Trevarrian Hill runs "alongside the west side of the main body of the settlement of Trevarrian", which is "on the other side of the road". On the same side of the road is Shrub Cottage, and "[to] the east of the main body of the settlement is

the B3276". The judge also referred (in paragraph 36) to aerial photographs and maps, which show, in 1907, Beacon House and Shrub Cottage to the west of Trevarrian Hill, and, in 1963, no other dwellings on that side of the road – the settlement having by then formed around the junction with the B3276. Since then some holiday cottages have been built behind the Watergate Bay Hotel and a farmstead above Mawgan Porth.

The relevant policies of the Cornwall Local Plan

5. Policy 3 of the local plan, "Role and function of places", states:

> "…
>
> 3. Other than at the main towns identified in this Policy, housing and employment growth will be delivered for the remainder of the Community Network Area housing requirement through:
>
> - identification of sites where required through Neighbourhood Plans;
> - rounding off of settlements and development of previously developed land within or immediately adjoining that settlement of a scale appropriate to its size and role;
> - infill schemes that fill a small gap in an otherwise built frontage and do not physically extend the settlement into open countryside. Proposals should consider the significance or importance that large gaps can make to the setting of settlements and ensure that this would not be diminished;
> - rural exception sites under Policy 9.
>
> …".

6. The reasoned justification for the policy states, in paragraph 1.68:

> "1.68 In smaller villages and hamlets in which 'infill' sites of one-two housing units are allowed, the settlement should have a form and shape and clearly definable boundaries, not just a low density straggle of dwellings. …
>
> Rounding off: This applies to development on land that is substantially enclosed but outside of the urban form of a settlement and where its edge is clearly defined by a physical feature that also acts as a barrier to further growth (such as a road). It should not visually extend building into the open countryside.
>
> Previously developed land: In principle the use of previously developed land within or immediately adjoining the settlement will be permitted provided it is of a scale appropriate to the size and role of the settlement.
>
> Rural Exception sites: These are affordable housing led developments adjoining, or physically well related to, the built form of existing settlements,

> (they allow for a proportion of market housing where it is required to support delivery of the affordable element). The definition of these sites is set out in Policy 9 of the Local Plan."

7. Five other policies of the local plan were mentioned in argument before us: Policy 1, "Presumption in favour of sustainable development", Policy 2a, "Key targets", Policy 7, "Housing in the countryside", Policy 9, "Rural Exceptions Sites", and Policy 21, "Best use of land and existing buildings".

8. Policy 1 says that "[when] considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework ["NPPF"] …".

9. Policy 2a says that the "Local Plan will provide homes in a proportional manner where they can best meet need and sustain the role and function of local communities and that of their catchment", and that "[development] proposals in the period to 2030 should help to deliver", among other things, "[a] minimum of 52,500 homes at an average rate of about 2,625 per year to 2030".

10. Policy 7 says that "[the] development of new homes in the open countryside will only be permitted where there are special circumstances", and that "[new] dwellings will be restricted to" the five categories it identifies: "[replacement] dwellings", the "subdivision of existing residential dwellings", the "[reuse] of suitably constructed redundant, disused or historic buildings that are considered appropriate to retain and would lead to an enhancement to their immediate setting", "[temporary] accommodation for workers" and "[full] time agricultural and forestry and other rural occupation workers". Paragraph 2.33 in the reasoned justification for the policy says that "[open] countryside is defined as the area outside of the physical boundaries of existing settlements (where they have a clear form and shape)", that "[the] Plan seeks to ensure that development occurs in the most sustainable locations in order to protect the open countryside from inappropriate development", that the "[supporting] text to Policy 3 sets out the Council's approach to sustainable development", that while "the majority of development will be provided in settlements … it is recognised that there may be a need for some housing in the countryside", and that "[in] these locations [the council] will seek to provide a focus on efficient use of existing properties and buildings to meet needs and set out other exceptions to development in the countryside …".

11. Policy 9 says that "[development] proposals on sites outside of but adjacent to the existing built up area of smaller towns, villages and hamlets, whose primary purpose is to provide affordable housing to meet local needs will be supported where they are clearly affordable, housing led and would be well related to the physical form of the settlement and appropriate in scale, character and appearance …".

12. Policy 21 says that, "to ensure the best use of land, encouragement will be given to sustainably located proposals that … [use] previously developed land and buildings provided that they are not of high environmental or historic value …". Paragraph 2.130 in the reasoned justification for the policy states that the local plan "seeks to deliver a sustainable balance of development, meeting our communities' needs and seeking to protect and enhance our environment" and that "[the] Plan led system provides the best way of achieving this objective as set out in Policy 3 of this Plan".

Paragraph 2.131 says that "[the] importance of the countryside (defined here as the area outside of the urban form or settlements) ranges from its value as agricultural land, for its landscape value, its biodiversity and historic character …".

The planning officer's advice

13. The application for planning permission came before the council's Central Sub-Area Planning Committee on 20 January 2020. In his report to the committee, the planning officer recommended that planning permission be granted. He said that "[the] proposal is supported by policies 3 and 21 of the Cornwall Local [Plan] in that the new home is on previously developed land immediately adjacent to a settlement" (paragraph 2).

14. He set out the objection of the St Mawgan-in-Pydar Parish Council in full. The parish council contended that the proposal did not comply with Policy 3 of the local plan because the development would be neither rounding-off nor infilling, and that "although Beacon House lies within the settlement of Trevarrian, the main built-up part of the hamlet is situated the other side of the coast road from Beacon House". It said the suggestion that the site constitutes "previously developed land" would "not accord with the definition … in the glossary to the [NPPF] which specifically excludes 'residential gardens in built up areas'" (paragraph 16).

15. In the section of his report entitled "[housing] development", the officer said (in paragraphs 21 to 23):

> "21. The site is located within the countryside. It is previously developed land (PDL) by reason that it contains the garden area of an existing home on land outside of a built up area.
>
> 22. Policy 3 of the Cornwall Local Plan … supports new housing on PDL provided that the site is located within or immediately adjoining a settlement and that … the scale of the proposal is appropriate to its size and role. The application complies with this policy insofar that the proposed new home is located on PDL which adjoins the settlement of Trevarrian.
>
> 23. An important planning judgment required when considering the proposal against Policy 3 is whether or not the application site immediately adjoins Trevarrian. This is arguable as the site and settlement are physically separated by a road and the proposed new house by the same road and a driveway yet a new home on this site would be more immediately adjoining the settlement than not in terms of its setting and how it would functionally operate. The officer conclusion that the site immediately adjoins is underpinned by the judgment that this proposal would extend the residential setting and function of Trevarrian rather than introducing a new home of a more detached nature."

16. The officer went on to say that in his view the proposed development would not harm "the distinctive character and beauty of the surrounding AGLV landscape", because the site was "already residential in nature and function and is well-related to the nearby settlement; the proposed new build replaces an existing double garage; and as

the scale and design of the proposed new build combined with established boundary vegetation would ensure that the proposal does not introduce a new building prominent and/or discordant to the surrounding setting" (paragraph 30).

17. In an addendum to his report, dated 20 January 2020, the officer referred to the parish council's assertion that, because there was a field between the site and the "coast road", the site could not be regarded as previously developed land within or immediately adjoining a settlement, that the applicable policy was Policy 7, and that if it applied that policy, the council should refuse planning permission. His advice was this:

> "The officer response to the new comments submitted from the parish council is as follows:
>
> - A difference in opinion between officers and the parish council relates to whether or not the site is immediately adjoining the settlement. If it is, the proposals can comply with Policy 3 … but it would not if it is not. The officer report makes clear that this judgment is arguable and sets out the reasons why officers have concluded that the site is immediately adjoining a settlement at paragraph 23.
>
> - The parish council are correct that the proposal does not comply with Policy 7 of the CLP but the officer recommendation for approval is not reliant on this policy. Rather, the officer recommendation is underpinned by Policies 3 and 21 of the CLP, as set out in paragraphs 21-24 of the officer report.
>
> - Trevarrian is adjudged by officers to be a settlement because it is a well defined group of dwellings with a collective name. It is a place where people live in permanent buildings which has form, shape and clearly defined boundaries. It doesn't contain a wide range of services and facilities but there is no requirement for such in the CLP or the Chief Planning Officer's Advice Note: Infill/Rounding Off (CPOAN). The CPOAN confirms otherwise, by stating that 'in defining settlements there are no expectations of services and facilities'.
>
> - Officers are not suggesting that previously developed land provides a mechanism to overturn the provisions of an up to date development plan. For the reasons set out in the officer report, officers have concluded that the proposal complied with the development plan."

The committee meeting

18. At the committee meeting, as the minutes record, the members discussed the question of whether the site of the proposed development could properly be regarded as "immediately adjoining" the settlement. Mr Corbett, who is a councillor of St Mawgan-in-Pydar Parish Council, spoke against the proposal. One of the councillors "commented that from his knowledge of the area … Beacon House had always formed part of the settlement of Trevarrian". In response to members' questions,

officers expressed their view that "Trevarrian was a settlement and that the proposed site was immediately adjoining the settlement". They "made clear that whether or not the site [was] adjoining the settlement [was] arguable, explained why it was arguable and invited the … committee to make their own judgements on this". They were also "of the view that the development of the site would not set a precedent for development of adjoining green space". A "full and detailed debate ensued". Three things in particular were discussed: first, the view that the "site was immediately adjoining the settlement of Trevarrian"; second, the view that the "proposed development was on previously developed land"; and third, the concern that "the site was outside the settlement, not immediately joining [sic] and that the application site and double garage did not constitute previously development land". The committee resolved that planning permission should be granted, by a majority of nine to five.

Interpreting development plan policy – the role of the court

19. There is ample case law relevant to the interpretation of development plan policies, both in the Supreme Court and in this court. Some basic points are worth repeating here:

    (1) Ascertaining the meaning of a development plan policy is, ultimately, a matter of law for the court, whereas its application is for the decision-maker, subject to review on public law grounds (see the judgment of Lord Carnwath in *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] UKSC 37; [2017] 1 W.L.R. 1865, at paragraphs 22 to 26). The interpretation of planning policy should not, however, be approached with the same linguistic rigour as the interpretation of a statute or contract. Local planning authorities "cannot make the development plan mean whatever they would like it to mean" (see the judgment of Lord Reed in *Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13; [2012] PTSR 983, at paragraphs 17 to 19). But as was said in this court in *R. (on the application of Corbett) v Cornwall Council* [2020] EWCA Civ 508 (at paragraph 66), "the professional officers of a local planning authority, and members who sit regularly on a planning committee, will not often be shown to have misinterpreted the policies of its development plan".

    (2) In seeking to establish the meaning of a development plan policy, the court must not allow itself to be drawn into the exercise of construing and parsing the policy exhaustively. Unduly complex or strict interpretations should be avoided. One must remember that development plan policy is not an end in itself but a means to the end of coherent and reasonably predictable decision-making in the public interest, and the product of the local planning authority's own work as author of the plan. Policies are often not rigid, but flexible enough to allow for, and require, the exercise of planning judgment in the various circumstances to which the policy in question applies. The court should have in mind the underlying aims of the policy. Context, as ever, is important (see *Gladman Developments Ltd. v Canterbury City Council* [2019] EWCA Civ 699, at paragraph 22, and *Braintree District Council v Secretary of State for Communities and Local Government* [2018] EWCA Civ 610, at paragraphs 16, 17 and 39).

(3) The words of a policy should be understood as they are stated, rather than through gloss or substitution. The court must consider the language of the policy itself, and avoid the seduction of paraphrase. Often it will be entitled to say that the policy means what it says and needs little exposition. As Lord Justice Laws said in *Persimmon Homes (Thames Valley) Ltd. v Stevenage Borough Council* [2005] EWCA Civ 1365 (at paragraph 24), albeit in the context of statutory interpretation, attempts to elicit the exact meaning of a term can "founder on what may be called the rock of substitution – that is, one would simply be offering an alternative form of words which in its turn would call for further elucidation".

The judgment in the court below

20. In giving her interpretation of the relevant part of Policy 3, Jefford J. referred to the definitions of the words "adjoin", "adjoining" and "adjacent" in the online Oxford English Dictionary, which, she said, were "wide enough to include "next to" or "very near"" (paragraph 27 of the judgment). The addition of the word "immediately" did not change this. Its presence did "no more than reinforce the word "adjoining" and indicate the element of judgment in whether a site is or is not adjoining, if that word is construed as including "very near" or "next to"" (paragraph 28).

21. Dealing with Mr Corbett's argument that the land to the west of Trevarrian Hill was in "open countryside" and that Policy 7 of the local plan should therefore have been applied, the judge said the application of both policies was "likely to involve matters of planning judgment rather than be predicated on a single restrictive meaning of the words used …" (paragraph 38). The application of Policy 3 might "create a risk of creep into the open countryside", but that, she said, "is a matter of planning judgment" (paragraph 39).

22. As for the dispute between the parties on the question of whether Trevarrian Hill was part of the settlement, the judge's view was that "[the] road itself may be regarded as within the settlement and … the driveway which runs to the road would not then be separated from the settlement by any physical feature" (paragraph 45). A "sensible reading" of Policy 3 was, she said, "one in which the question of whether the development site was immediately adjoining the settlement would involve an element of judgment and not one in which the physical divider necessarily rendered the site not "immediately adjoining"". This was not a question which could be answered by applying a "rigid test" of the kind contended for by Mr Corbett (paragraph 46). The judge rejected the "restrictive meaning" of the expression "immediately adjoining" urged by Mr Corbett. In her view, the words were "apt to include "very near to" and "next to"", and the question of "whether the site falls within that meaning involves an exercise of judgment" (paragraph 49). The advice given to the council's committee in the officer's report was "not misleading in identifying that there was such a judgment to be exercised", and the minutes of the committee meeting made it "clear that that issue was properly debated" (paragraph 51).

Did the council misinterpret and misapply Policy 3 of the local plan?

23. For Mr Corbett, Mr Richard Humphreys Q.C. argued that the words "immediately adjoining" in Policy 3 could only mean "contiguous" or "coterminous". He made three main submissions. First, the judge had failed to consider the relevant policy context. Policy 3 made it plain that "infill" development must not extend into the open countryside and that "rounding off" must be within an existing settlement. The basic aim of that part of the policy was clearly that only development physically contiguous with a settlement should be supported. Under Policy 7, development in the open countryside would be permitted only in special circumstances. This also suggested a strict interpretation of Policy 3. Second, the use of the adverb "immediately" indicates the narrowest possible interpretation of the word "adjoining" in this policy. Third, the officer had misunderstood what it was that had to be "immediately adjoining" the settlement. He thought Policy 3 meant the "development site" as a whole must be "immediately adjoining". He should have seen that the policy requires this not only of the "previously developed land" but also of the proposed development itself.

24. I cannot accept that argument. I see no legal error in the council's conclusion that the concept in Policy 3 of "development of previously developed land within or immediately adjoining [a] settlement of a scale appropriate to its size and role" could and did embrace the proposed development. This is not a legal concept. It is a concept of planning policy. It requires the exercise of planning judgment on the particular facts of the site and proposal in hand. The words "immediately adjoining" do not require an elaborate explanation. They should not be given an unduly prescriptive meaning. There is a degree of flexibility in them. They do not necessarily mean "contiguous" or "coterminous" or "next to" or "very near". They allow the decision-maker to judge, on the facts, whether the site and proposed development can be regarded as sufficiently close to the settlement in question to be "immediately adjoining" it – which is what the council did here.

25. Policy 3 is permissive towards certain kinds of housing development that have a specific physical and functional relationship to a settlement. The expression "immediately adjoining" must be understood in this context. Here, the question for the decision-maker is not, for example, whether two houses or two parts of a structure are "immediately adjoining" (cf. *CAB Housing Ltd. v Secretary of State for Levelling Up, Housing and Communities* [2022] EWHC 208 (Admin), at paragraphs 81 to 85). That question calls for an evaluative judgment on the facts. In their context, the words "immediately adjoining" denote a relationship that is considered by the decision-maker to be of sufficient proximity between the site and proposed housing development and the settlement to fall within that description. The extent of the existing settlement, and how the site and proposal relate to it, are quintessentially matters of fact and judgment for the decision-maker. The fact that views might reasonably differ on those questions – as it seems they did here, even within the committee – is itself an indication that the "immediately adjoining" concept should not be treated as if it was rigidly defined.

26. Although it should not normally be necessary to delve into dictionary definitions when one is interpreting planning policy, it was appropriate, I think, for the judge to use the dictionary definition of the words "adjoin" and "adjoining" as a starting point (see *R. (on the application of Crematoria Management Ltd.) v Welwyn Hatfield*

Borough Council [2018] EWHC 382 (Admin), at paragraph 32). What that exercise shows is that the word "adjoining" has both a narrower and a broader sense.

27. In my view the use of the word "immediately" to qualify the word "adjoining" is consistent with the intention to use the latter in its broader sense. If "adjoining" in this context meant simply "contiguous", in its literal sense of "touching", the addition of "immediately" would not have been necessary. I agree with the judge that the effect of this word is to indicate, as she put it, "the element of judgment in whether a site is or is not adjoining, if that word is construed as including "very near" or "next to"". No doubt it narrows the range of evaluative judgment open to the decision-maker on the facts. But it does not remove the need for such judgment to be applied. On the contrary, it confirms the need for that to be done.

28. As Mr Sancho Brett submitted for the council, this understanding of the words "immediately adjoining" in Policy 3 also accords with common sense. The judge was right to avoid attributing to those words a definition which could lead to the perverse result that a site or development largely separate from a settlement but touching it only at a single point would automatically be "immediately adjoining" it, while a site which did not touch the settlement at all but was much more closely related to it as a whole could not be so regarded.

29. I agree with the judge that this is not a case in which a single objective meaning can be given to the policy at issue. Sometimes a policy whose interpretation is in dispute, or an expression used in it, may admit of only one immutable meaning. But often it may require a broader interpretation if its true meaning is to be seen. Policy 3 is a good example. Essential to a proper understanding of the words "immediately adjoining" is that there are, in this part of the policy, two evaluative judgments to be made – perhaps combined in a single conclusion. First, a judgment must be made about the extent of the settlement itself. Secondly, a judgment must also be made whether the site and development are "immediately adjoining" the settlement.

30. The meaning attributed by the judge to the words "immediately adjoining" is also supported by the context in Policy 3 itself. I do not perceive the aim of the policy here as being to support only development physically contiguous with a settlement. As Mr Brett pointed out, it contemplates several different kinds of development: the "rounding off of settlements", the "development of previously developed land within or immediately adjoining [a] settlement …", "infill schemes that fill a small gap in an otherwise continuous built frontage" and "rural exception sites under Policy 9". Whereas some of those categories will comprise development within a settlement, that is not true of them all. This understanding of the policy is confirmed by the reasoned justification in paragraph 1.68. And the restrictive terms of Policy 7 do not call for a more stringent interpretation of Policy 3 than its own language allows. The reasoned justification for Policy 7, in paragraph 2.33, makes clear that while "the majority of development will be provided in settlements … it is recognised that there may be a need for some housing in the countryside". It is implicitly acknowledged, therefore, that Policy 3 contains specific exceptions to the general approach set out in Policy 7 of restricting development in the countryside. Nor do any of the other policies of the local plan imply that the words "immediately adjoining" in Policy 3 should be read more narrowly than I have suggested. Policy 9 provides explicit support for "affordable housing" outside settlements where it is "adjacent to" and "well related to the physical form of the settlement". This does not cut across the interpretation the

council has given to the words "immediately adjoining" in Policy 3. If anything, it adds force to that interpretation. Neither Policy 2a, which describes the targets for the development of new housing in Cornwall, nor Policy 21, which encourages the use of "previously developed land", affects the interpretation of Policy 3.

31. In the recent decision of this court in *McGaw v Welsh Ministers* [2021] EWCA Civ 976 a generous interpretation was given to the statutory phrase "immediately adjacent" in article 1(3) of the Town and Country Planning (General Permitted Development) Order 1995, which provides that the height of a proposed building is to be measured "from the surface of the ground immediately adjacent" to the building. In that case the surface immediately adjacent to the building in question was not, in fact, "the surface of the ground", but the wall between the building and the neighbouring garden. In his judgment (with which Lady Justice Asplin and Lewison L.J. agreed), Sir Timothy Lloyd concluded that "the ground which is just the other side of the boundary wall is ground immediately adjacent to the new building", because "[in] practice it is this ground that provides the context, in terms of assessing the extent to which the new building would protrude in height on its southern side so as, potentially, to affect visual amenity in the area" (paragraph 39).

32. That reasoning shows the importance of relevant context in determining the meaning of statutory words, just as context is essential to the interpretation of policy. In *McGaw*, given the purpose of the statutory provisions in question, a pragmatic understanding and application of the concept of "the surface of the ground immediately adjacent …" was justified. In this case, however, we are not concerned with the interpretation and application of a statutory concept, but with the meaning and scope of a policy in a development plan. The task here is different. And, crucially, so is the context. With this in mind, I cannot accept Mr Humphreys' submission that in the absence here of any "tension or conundrum" such as arose in *McGaw*, the expression "immediately adjoining" in Policy 3 must mean, and only mean, "contiguous".

33. It seems to me that the officer's application of Policy 3 in the circumstances of the proposal before the committee was both realistic and, in law, unexceptionable. He concluded that the site was "previously developed land" (paragraph 21 of his report). He recognised that whether or not the site was "immediately adjoining" the settlement was not straightforward. It was, to use his word, "arguable". But it is obvious from his conclusion that "the site immediately adjoins" the settlement of Trevarrian (paragraph 23 of the report), that he thought the words "immediately adjoining" must have a broader meaning than merely "contiguous", and, crucially, that the proposed development would be sufficiently close to the settlement to satisfy Policy 3. This is also evident from his statement that the proposed development was "well-related to the nearby settlement" (paragraph 30). The members themselves considered this question in a "full and detailed" debate. The conclusion of the majority on the compliance of the proposal with Policy 3 was the same as the officer's. Like him, they evidently recognised that the words "immediately adjoining" must have the broader meaning, and, on the facts, they too accepted that the proposal earned the support of the policy thus construed. In my view, the understanding of the expression "immediately adjoining" on which the grant of planning permission was based was correct, and the application of Policy 3 legally unimpeachable. No material defect is to be seen in the officer's relevant advice, either in the report itself or in the

addendum (see *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, at paragraphs 41 to 42). The interpretation of relevant local plan policy was correct, and, in the application of policy, the conclusions reached in the exercise of planning judgment were neither irrational nor otherwise unlawful.

Did the council take into account an immaterial consideration?

34. Ground 2 of the appeal is that it was legally irrelevant to the interpretation and application of Policy 3 for the officer, in the last sentence of paragraph 23 of his report, to consider whether the proposal "would extend the residential setting and function of Trevarrian rather than introducing a new home of a more detached nature". This, Mr Humphreys submitted, was an immaterial consideration because the concept in Policy 3 of development "immediately adjoining" a settlement signifies a purely physical relationship between development and settlement, not a functional one. This argument does not appear to have featured strongly, if at all, in Mr Corbett's submissions in the court below. But even if it is a new point, I think we can tackle it without causing prejudice or inconvenience to the council, and I shall therefore do so.

35. In my view the submission is mistaken. Though the main focus of this part of Policy 3 is on the physical and visual relationship between the site and development and the settlement, it does not follow that the functional relationship between them can have no bearing upon the necessary exercise of planning judgment. Neither explicitly nor implicitly is that consideration excluded, and I see no reason to think it was regarded as irrelevant by the council when formulating the policy. The reference both in the policy itself and in paragraph 1.68 of the reasoned justification to the "size and role" of the settlement seems consistent with that understanding. In my view, therefore, it was lawful and appropriate for the officer, and the committee, to consider the likely effect of the proposed development on "the residential setting and function of Trevarrian" in assessing the proposal's compliance with Policy 3. This was not an immaterial consideration.

Conclusion

36. For the reasons I have given, I would dismiss the appeal.

Lord Justice Moylan:

37. I agree.

Lord Justice Stuart-Smith:

38. I also agree.