IN THE HIGH COURT OF JUSTICE CO/2648/2017
QUEEN'S BENCH DIVISION
PLANNING COURT
[2018[EWHC 212 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9th February 2018

Before:

MR JOHN HOWELL QC
Sitting as a Deputy High Court Judge

Between:

THE QUEEN

On the application of

DAVID PEARL Claimant
- and -
MALDON DISTRICT COUNCIL Defendant

DAVID BROWN Interested Party

- -

Ms Katherine Olley (instructed by Bircham Dyson Bell) for the **Claimant**
Mr Richard Langham (instructed by Anthony Collins Solicitors LLP) for the **Defendant**
Mr John Dagg (instructed by *) for the **Interested Party**

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Approved Judgment

Judgment Approved by the court for handing down.

Mr John Howell QC:

1. This is a claim for judicial review of the decision of the local planning authority, Maldon District Council, on April 24th 2017 giving approval for matters reserved for their subsequent approval under an outline planning permission for the erection of a single dwellinghouse at Summer House, Back Lane, Wickham Bishops. Permission to make this claim was granted by Lang J.

2. The Claimant, Mr David Pearl, is a local resident who objected to the grant of approval. On his behalf, Ms Katherine Olley contended that the approval impugned was given unlawfully on the grounds (i) that the application for approval was invalid, as it sought approval for a matter, layout, which was not reserved for subsequent approval in the grant of outline planning permission, and as the details for which approval was sought were incompatible with the layout plan in accordance with which the development had to be carried out; (ii) that, in any event, the consultation conducted by the Council on the matters ultimately approved was inadequate; (iii) that there was a failure to take various material considerations into account when deciding to give the approval; and (iv) that the Council had failed to provide any reasons for their decision to do so.

FACTUAL BACKGROUND

3. The Interested Party, Mr David Brown, applied to the Council on February 5th 2013 for outline planning permission in accordance with the plans and drawings accompanying the application, with some matters reserved for subsequent approval, for a development including the erection of a single dwellinghouse in the grounds of Summer House. The area in the garden of that property to which the application related was said to be 0.14 hectares. The main part of the site ("*the main site area*") at the southern end of the existing garden was broadly square (36m north to south and 35m east to west). The site also included a further, smaller area of land to the north nearer Sumner House ("*the additional site area*"). The application sought approval for the access and layout shown on the plans. The matters to be reserved for subsequent approval by the Council were the scale, appearance and landscaping of the development.

4. The Council refused to grant planning permission for the development by a notice dated April 19th 2013. However, an Inspector appointed by the Secretary of State allowed the Interested Party's appeal against that refusal in a decision letter dated February 10th 2014. The Inspector granted planning permission *inter alia* for the "erection of single dwellinghouse....in accordance with the terms of the application....subject to the conditions in Annex A" of his decision letter.

5. The conditions thus imposed on the grant of planning permission included:

> "1) Details of the appearance, landscaping and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

> 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
>
> 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 12.2005/M001; 12.2005/M002; 12.2005/E101; 12.2005/P201 Rev A; MFA/SH01.
>
> 6) Concurrently with the first submission of reserved matters details of the access and parking areas shown on drawing 12.2005/P201 Rev A, including any means of enclosure, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be completed before the building is occupied in accordance with the approved details and that area shall not thereafter be used for any purpose other than access and the parking of vehicles.
>
> 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no garages, extensions or separate buildings (other than ancillary outbuildings not exceeding 10 cubic metres in volume) shall be erected within the site.
>
> 8) No development shall take place, nor shall there be any demolition works or site clearance, until there has been submitted to and approved in writing by the local planning authority a scheme of fencing and ground protection to protect the trees/hedges/shrubs, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection during the demolition of the existing building and throughout the course of the development. The development shall be carried out in accordance with the approved scheme."

6. One of the plans, in accordance with which the development was required to be carried out by condition (4), was Plan P201 Rev A. This was described (and I shall refer to it as) the "*Site Plan*". This was a small-scale plan at "1:500 @ A4". The plan showed a rectangular building, plainly the proposed new house, in the main site area. Various measurements were marked on the plan (possibly to assist given its scale). These included the length of the house (north - south), stated as being 15.5 m, and its width (east-west), stated as being 11m. The distance from its western elevation to the western site boundary was shown as 11.5m; the distance from its eastern elevation to the eastern site boundary was shown as 10.8m. The distance from its northern elevation to the adjacent part of the northern boundary was indicated to be 2.7m and that from the southern elevation of the new house to the southern boundary of the site was indicated to be 18.2m. Other distances around the site boundaries were also shown. The Site Plan showed what was plainly intended to be the gravel drive referred to in the application form, from the access at an

adjacent road at the north-eastern end of the additional site area, through that area to the proposed dwelling, coloured beige on the plan. The rest of the site, apart from the proposed new house, was coloured green.

7. The Interested Party applied, on a standard form dated December 20th 2016, for approval of appearance, landscaping, layout and scale. It was stated that "all reserved matters except access and siting were dealt with by the planning inspector".

8. The application listed three drawings that were submitted with the application for approval, numbered 16.09.01 - 16.09.03 ("*the initial plans*"). The area within the site boundary shown on Plan 16.09.03 entitled "Site Layout / Block Plan" ("*the initial site layout plan*") only included the main site area, although what was envisaged in the additional site area was also shown on that plan. The initial site layout plan showed a building of irregular footprint. One part comprised a three storey house. This alone had a larger footprint than the house on the Site Plan: it had a width of 11.9m and a maximum length of 16.75m. It was also not exactly rectangular in plan form. Instead it comprised two rectangular parts, of which the western part was somewhat shorter than the eastern part at both its northern and southern ends. The other part of the building comprised a projecting single storey structure to the north, containing a utility room and office as well as a garage at its eastern end. The garage, which was about 6m by 6.5m, extended to about 7m east of the main part of the house and to the north of both the main part of the house and the remainder of the single storey structure. The resulting length of the main house and single storey structure (north-south), excluding the garage, was 19.15m. This meant that the building (excluding the garage) was located about 2m, and the main part of the house, over 5m from the northern boundary of the main site area and about 14m from its southern boundary. Its western elevation was 11.5m from the western boundary and the eastern elevation of the main part of the house was about 12m from the eastern boundary. The initial site layout plan showed a "flagstone paved terrace & patio." The patio was on the western side of the main house and the terrace flanked that elevation and the northern and southern elevations.

9. A Supporting Statement submitted with the application stated that "the appeal dealt with access and layout and it is therefore the objective of this statement to deal with all other matters of consideration together with conditions imposed". The initial plans were stated to be submitted for approval of details of appearance landscaping and scale under condition (1). It was not suggested that they were submitted for approval of the layout shown. It was also stated, in relation to condition (6), that parking and access were shown on Drawings 16.09.01 and the initial site layout plan together with means of enclosure. The latter drawing was also said to show the trees to be protected for the purpose of condition (8).

10. The Council advertised the application for approval of reserved matters by means of a site notice and letters to interested parties locally.

11. On January 27th 2017 the Claimant wrote to the Council contending that the application was invalid as it differed materially from the outline permission granted on appeal and conflicted with the conditions imposed. He pointed out that condition (4) required the site to be developed in accordance with the Site Plan, which showed

the position and footprint dimensions of the proposed building, and that condition (7) prevented construction of garages and extensions. He stated that the application sought approval for layout but that layout was not a matter that been reserved for subsequent approval and that what was proposed involved substantial changes to what had been approved. He stated that the application included an alteration to the north-east site boundary, an increase of almost 50% over the approved footprint of the building and the addition of a double garage, all of which were in conflict with the conditions imposed[1]. The Claimant also wrote to the Council separately on January 29th 2017 objecting to those details shown on the initial plans which in his view were genuinely reserved, namely landscaping, scale and appearance, as well as the access route to the dwelling.

12. On January 31st 2017 the Interested Party responded to the Claimant's letter stating that "scale" had been reserved for subsequent approval in the outline planning permission; that, as defined in article 2 of the Town and Country Planning (Development Management Procedure)(England) Order 2015 ("*the DMPO*"), "scale" included the overall footprint of a building, and that the "layout" (as defined in that article) remained the same.

13. In any event the Interested Party delivered revised plans to the Council on February 6th 2017. These were numbered 16.09.01-16.09.04 but were all marked "Rev A". I shall refer to 16.09.03 Rev A as "*the first revised site layout plan*". The revised drawings omitted the single storey structure, including the garage, shown on the initial site layout plan apparently replacing it with a larger terrace. The new dwelling was reduced to two storeys but it retained the same footprint and position as the main part of the building described in paragraph [8] above.

14. The Interested Party also delivered to the Council at the same time a revised part of an application form for approval of reserved matters and a revised Supporting Statement. The revised part of an application form contained answers to some of the questions on the initial form. It stated that approval was sought for appearance, landscaping and scale. It did not now suggest, however, as the initial application form had done, that approval was being sought for layout. It omitted the statement made in the original application form that "all reserved matters except access and siting were dealt with by the planning inspector". The revised supporting statement also changed the description of the site, by adding to its description of the main site area, the statement "Together with an irregular shaped piece of land which forms the access." The first revised site layout plan did not, however, change the site boundary shown on the plan, which as I have mentioned included only the main site area and omitted the additional site area (to which this additional sentence referred). The first revised site layout plan did show, however, the access from the dwelling going through the additional site area to a junction with the adjoining highway (as envisaged in the Site Plan) as well as proposals for fencing, removal of vegetation and the line of the proposed new foul drain in that area. The three revised plans were again stated in the revised Supporting Statement to be submitted to provide details of appearance, landscaping and scale for approval.

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[1] In my judgment condition (7) merely removed permitted development rights, which was the reason given for its imposition by the Inspector. It did not preclude, for example, the incorporation of a garage in the new house permitted

15. The receipt of the revised drawings was advertised by a site notice on February 7th 2017 inviting responses by February 21st 2017. Letters were also sent on February 8th 2017 to interested parties locally informing them that the application had been amended by the submission of revised plans. The notice and letters invited any views on the revised plans to be sent to the Council by February 21st (in the case of the site notice) and by February 20th 2017 (in the case of the letters).

16. The description of the proposal in the site notice and letters still referred, however, to approval being sought for "layout". Moreover the revised part of the application form and the revised supporting statement were not put on the Council's website until March 6th 2017. Mr Matthew Leigh, the Council's Group Manager of Planning Services, stated in a witness statement filed by the authority that, as the documents were delivered directly to the case officer dealing with the application, they were not initially given to the administrative staff who normally receive such documents and then upload them before forwarding them to the relevant planning officer. Mr Leigh also stated that it is normal practice for all documents to be placed in the planning file. It appears, however, that, when the Claimant attended the Council's offices on February 16th 2017 to inspect the case file, he did not find them there.

17. The Claimant wrote two letters to the Council after his visit, both dated February 19th 2017, commenting on the revised plans. The Claimant's first letter contained his comments on matters other than the validity of the application, such as landscaping, scale, appearance and character. His second letter dealing with the validity of the application noted that it still sought approval for layout (which was not a reserved matter) and that, notwithstanding what the Interested Party had stated in his letter dated January 31st 2017, the approved layout had been changed even allowing for the amended plans. He drew attention to the fact that the application related only to the main site area which, so he contended, had two main consequences. The first was that the "layout proportions" had been changed, since the exclusion of the additional site area coupled with "a significant increase in the footprint of the house, hard standing and paved area...changes the ratio between the built form and the site as a whole". The second was that "access to the proposed building is now shown as being via land belonging to a neighbouring property" rather than there being a "direct, independent access onto the public highway".

18. On February 28th 2017 the Interested Party submitted a revised site layout / block plan, 16.09.03 Rev B ("*the second revised site layout plan*"). This replicated the first revised site layout plan, including the line marked "site boundary" round the main site area. But it added a red line around that area and the additional site area. The revision was noted as "red site line added".

19. The Interested Party's application was due to be considered by the Council's North Western Area Planning Sub-Committee on March 6th 2017.

20. The members of the Committee were provided with a report on the application by the Interim Head of Planning Services ("*the Officer's Report*"). The report described the proposal as one for the approval of appearance, landscaping, layout and scale. It recommended approval with a condition requiring the development to be carried out in complete accordance with the initial plans, not the revised plans

that had been submitted. It also proposed a condition relating to the use of the garage that had been shown on the initial plans but deleted from the revised plans. It is not clear when the Officer's Report was written but it refers to one of the revised plans and to a representation received on February 15th 2017. In addition to treating the proposal as seeking approval for layout and seeking to incorporate plans that had been superseded into the recommended approval, the report also provided inaccurate statements about the footprint and ridge levels of the proposed dwelling, failed to address other representations that the Council had received by February 15th 2017 and made no mention of the Claimant's contention that the application was invalid.

21. On March 1st 2017 the Claimant sent a document to members of the Committee giving "examples of errors" and "examples of omissions" in the Officer's Report. On March 2nd 2017 the Claimant's solicitors, Bircham Dyson Bell, wrote to the Council complaining about procedural irregularities. They contended that seeking approval for layout (when it was not reserved for subsequent approval) was unlawful. They also contended that the plans initially submitted showed a different layout from that approved and that a different site plan subsequently submitted was itself internally inconsistent.

22. On March 3rd 2017 an update on the application was provided to Members of the Committee by the Council's Director of Planning and Regulation Services ("*the Members' Update*"). This stated that the scheme had been amended to delete the double garage, office and utility room and that its scale had been amended. It indicated that the plans to which the approval recommended should be tied were the latest revised plans but again described the proposal as seeking approval *inter alia* of layout. It corrected the information in the Officer's Report about ridge heights, but not about the footprint of the house proposed. It referred to representations from the Claimant and his solicitors which were said to have been received "since publication of the agenda" but in fact beginning with the letter dated January 27th 2017 (that is to say before the Officer's Report must have been completed). It did not summarise the second letter that the Claimant had sent on February 19th 2017 which explained why in his view the application was invalid. The report sought to summarise the letter from the Claimant's solicitors, wrongly in their view as they explained in two subsequent e-mails. In those solicitors' view giving consideration to something not reserved was unlawful, whether or not it involved any difference from that originally approved.

23. On March 6th 2017, having learnt of the revised application form, the Claimant's solicitors complained that the amendment deleting layout from the matters for which approval was sought at that late stage in March did not allow for proper consultation and had been made after the date at which applications for the approval of reserved matters could be made.

24. In the event, on March 6th 2017, the Committee delegated the power to decide on the application to the Interim Head of Planning Services in consultation with three councillors. It appears that they were informed that the revised application form and supporting statement had been received on February 6th 2017 but not made available then on the Council's website by mistake.

25. As the Council had no Head of Planning Services, his powers fell to be exercised by the Council's Chief Executive. On April 20th 2017 she received a report on the application ("*the Report to the Chief Executive*"). This again described it as one seeking approval *inter alia* for "layout". It stated that the Council's Legal Services considered that there was no need to re-consult on the application and that only one of the three members consulted had responded to a request for his views, stating that he was "happy for you to grant consent". The Chief Executive accepted the recommendation that the application "be granted planning permission subject to the conditions contained within the original committee report and the 'Members Update'". There is no evidence that the Chief Executive was provided with either of those documents or any further substantive information about the application.

26. On April 24th 2017 the Council issued a decision notice signed by the Chief Executive. It referred to the proposal as a "reserved matters application for the approval of appearance, landscaping and scale", but not layout, and it gave approval, subject to conditions, for

> "the matters and details as shown on the submitted drawing(s) referenced 12.2005/M002, 16.09.01 REV A, 16.09.02 REV A, 16.09.03 REV B, 16.09.04 REV A, which were reserved for subsequent approval in the planning permission granted on appeal on 10 February 2014 in respect of Outline Application No.OUT/MAL/13/00118,Appeal ref. APP/X1545/A/13/2201061".

No statement of the reasons for the decision was provided

THE RELEVANT STATUTORY FRAMEWORK

27. Planning permission may be granted subject to conditions which require the subsequent approval of certain matters by a planning authority.

28. Specific provision is made in, and under, the Town and Country Planning Act 1990 ("*the 1990 Act*"), however, for the grant of an "outline planning permission". Section 92 of the 1990 Act provides that:

> " (1)....."outline planning permission" means planning permission granted, in accordance with the provisions of a development order, with the reservation for subsequent approval by the local planning authority... or the Secretary of State of matters not particularised in the application ("*reserved matters*").
>
> (2) Subject to the following provisions of this section, where outline planning permission is granted for development consisting in or including the carrying out of building or other operations, it shall be granted subject to conditions to the effect—
>
> (a) that, in the case of any reserved matter, application for approval must be made not later than the expiration of

> three years beginning with the date of the grant of outline planning permission; and
>
> (b) that, in the case of outline planning permission for the development of land in England, the development to which the permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved".

29. The scope of what may constitute an "outline planning permission" is narrowed by the DMPO in accordance with which it must be granted. Such a permission must be one "for the erection of a building" (rather than any other form of development) and one which requires "the subsequent approval of the local planning authority with respect to one or more reserved matters": see article 2 of the DMPO. For this purpose article 2 provides that:

> "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".

30. The relevant legislation imposes few requirements governing the application for, and approval, of such reserved matters (in marked contrast with the primary legislation governing applications for planning permission: see *R (Holborn Studios Limited) v the Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin) at [8]-[20], [64]-[86]).

31. Article 6 of the DMPO provides that:

> "An application for approval of reserved matters—
>
> (a) must be made in writing to the local planning authority and give sufficient information to enable the authority to identify the outline planning permission in respect of which it is made;
>
> (b) must include such particulars, and be accompanied by such plans and drawings, as are necessary to deal with

> the matters reserved in the outline planning permission..'

32. Where such an application is lodged, the authority must send the applicant an acknowledgement of the application and notify the applicant as soon as reasonably practicable if they consider it to be invalid. For this purpose it is invalid if it is not valid as defined in article 34(4) of the DMPO, for example, because it does not comply with the requirements of article 6: see article 11(2) and (5) and article 34(4). A copy of the application together with any accompanying plans or drawings must be entered in the register of planning applications (which, when it is kept using electronic storage, may be made available for inspection on the authority's website) within 14 days of receipt: see article 40(3)(a), (10) and (14).

33. The DMPO itself contains no requirement for an applicant or for the local planning authority to give others notice of the application[2]. Article 34(8) provides that "a local planning authority must provide such information about [an application for approval of reserved matters].....as the Secretary of State may by direction require; and any such direction may include provision as to the persons to be informed and the manner in which the information is to be provided." I have been referred to no such direction.

34. An application which complies with article 6 (together with any relevant fee) is a "non-validated application" on which the authority is required to give the applicant their decision within 8 weeks from the date on which it is received or such extended period as may be agreed: see article 34(1), (2)(b) and (5) of the DMPO.

35. Planning permission may also reserve matters other than the defined "reserved matters" by condition for subsequent approval. Applications for such approval have to comply with similar requirements as a reserved matters application and be determined within a similar period: see article 27 of the DMPO.

36. Where the decision on an application for the approval of "reserved matters" or of other matters requiring their approval under a condition is taken by the authority themselves or by one of their committees or sub-committees, there is no statutory requirement for reasons to be given for the decision. The Openness of Local Government Bodies Regulations 2014 ("*the 2014 Regulations*"), however, require an officer to make a written record of certain decisions taken, "along with reasons for the decision" and "details of alternative options, if any considered and rejected", and thereafter to make that record and any background papers available for inspection on the authority's website and its office, in each case as soon as reasonably practicable: see regulations 6 to 8 of the 2014 Regulations. The decisions to which these requirements apply include (by virtue of regulation 7(2),

> "A decision...if it would otherwise have been taken by the relevant local government body, or a committee, sub-committee of that body or a joint committee in which that body

[2] Other than when the application is to a county planning authority or national park authority who have to inform certain other authorities.

participates, but it has been delegated to an officer of that body either—

(a) under a specific express authorisation; or

(b) under a general authorisation to officers to take such decisions and, the effect of the decision is to—

(i) grant a permission or licence; [or]

(ii) affect the rights of an individual;.."

37. In this case it is unnecessary to consider whether a decision on an application for reserved matters approval may "affect the rights of an individual" or whether an approval given involves the grant of "a permission or licence". The decision in this case was taken under a specific express authorisation. Accordingly it is accepted by the Council that the Chief Executive was required to produce a written record, including her reasons for her decision. As I held in *R (Sasha and others) v Westminster City Council* [2016] EWHC 3283, [2017] PTSR 306, the reasons to be provided can be briefly stated but they must be intelligible and deal with the substantial points that have been raised, which may include giving reasons for rejecting any objections raising such points: see at [33]-[38] applying *Westminster City Council v Great Portland Estates plc* [1985] AC 661 per Lord Scarman at p673. These may have to include disclosing how any substantial issue of law was resolved.

WHETHER THE CHIEF EXECUTIVE'S DECISION WAS LAWFUL ASSUMING THAT THERE WAS AN APPLICATION WHICH COULD LAWFULLY BE CONSIDERED

38. It is convenient to consider first the Claimant's allegations that the decision impugned was unlawful on the ground (a) that there was a failure to take various material considerations into account and (b) that no reasons were provided for the decision.

39. In considering these complaints I shall assume that there was an application for approval of reserved matters that the Chief Executive, who took the decision impugned, could lawfully consider.

40. On behalf of the Claimant Ms Olley drew attention to the representations that the Claimant had made about the removal of trees at the site and damage to them that had already occurred, in some cases contrary to planning conditions previously imposed; about the proposed loss of further trees on the site boundaries which the Inspector had recognised as constituting part of the main quality of the site and which were protected by an existing condition; and about the failure to comply with the assurance in the access and design statement, which had accompanied the application for outline planning permission, that the development could be accommodated without the removal of any existing trees or other vegetation. She submitted that such representations had not been adequately reflected, much less properly addressed, in the Officer's Report and the Members' Update and that the

failure to impose any tree related conditions on the approval indicated that the representations had not been taken on board. She further contended that no reasons had been provided, as required, for rejecting the Claimant's representations on these and other matters such as the validity of the application.

41. On behalf of the Council, Mr Richard Langham submitted that the relevant question in relation to trees was whether the landscaping proposals on the second revised layout plan were acceptable. The historical matters on which the Claimant relied were matters to which no reasonable authority could have given any weight and that, if the trees shown to be retained required protection after the development had been carried out, that was a matter to be dealt with by making a Tree Preservation Order, not by the imposition of any condition. The condition imposed on the outline application, condition (8), to protect the trees to be retained during development, was as far as it was proper to go. But in any event, so he submitted, the Claimant's concerns were in fact summarised in the Members' Update.

42. In his skeleton argument Mr Langham had submitted that the decision had been taken by the Chief Executive "in the light of the assessment made in" the Officer's Report and the Members Update and "the legal advice obtained after 6 March" as a result of which it could not be contended that the approval was given on April 24th 2017 "in ignorance of any material consideration relating to the validity or otherwise of the application". He further contended that it was possible to infer from the reports that the reason for the decision was simply that the proposed details were acceptable and that there was no need for any further statement of reasons about the validity of the application as the Claimant knew of the amended application form "and thus why [the Council] had a valid application before it".

43. During the course of the hearing, however, Mr Langham produced a copy of the Report to the Chief Executive. This did not attach either the Officer's Report or the Member's Update. There is no evidence that the Chief Executive had those reports when taking her decision and Mr Langham did not suggest that she did. The Report to her did not attach the application documents or the plans and drawings that she was being recommended to approve. Nor did the Report describe them or the representations made in relation to them or address the issue of the validity of the amended application. The only substantive information it contained (apart from the reference to the resolution delegating the decision) were the statements that the Council's Legal Services did not consider that there had to be further consultation on the application and that the one Councillor consulted who had replied had said that he was happy for consent to be granted. In effect it would appear, therefore, that all the Chief Executive in fact did was to endorse the recommendation the report contained, made for the reasons which were not explained in the Report to her, to grant "planning permission" subject to conditions in ignorance of details of the application. She signed the decision notice two days later.

44. There is, of course, no objection to the person to whom the exercise of a discretion has been entrusted obtaining advice from others or relying on a fair summary provided by others of matters that may need to be taken into account when reaching a decision. But, in my judgment, the valid exercise of any statutory discretion requires the person entrusted with it to take into account herself those matters that, in the circumstances, the decision-maker must consider, and then to decide on the

merits in the light of them, how the discretion entrusted to her should be exercised. But in this case the Chief Executive failed to exercise the discretion delegated to her, to determine whether or not approval should be granted for any of the reserved matters described in the revised plans, on their merits and in the light of representations received. She was not in a position to do so. Nor was she in a position to resolve any issue about the validity of the amended application. At most she simply endorsed a recommendation given for reasons that were not disclosed to her. Her decision was accordingly unlawful.

45. It follows that it is unnecessary to consider whether or not the Officer's Report and the Members Update sufficiently described the Claimant's objections relating to the validity of the application or those relating to trees. Even had they done so, the Chief Executive had no regard to them. Likewise it is unnecessary to determine whether or not the Claimant's objections relating to trees were ones to which no reasonable person could have attached any weight whatsoever, so that it would be immaterial whether or not they were taken into account. Had I had to do so, I would not have been persuaded by Mr Langham's submissions on this point given, for example, the absence of any reasoned explanation of why trees that would be lost were of no materiality nor was I persuaded by his submission that imposing any condition designed to secure the retention of those trees shown to be retained after the completion of the development would not have been proper.

46. It is also common ground, as I have explained in paragraph [36] above, that the Chief Executive was required to produce a written record of the decision taken along with the reasons for the decision. She did not do so. The notice of the decision contains no such statement of reasons. The Report to the Chief Executive was admissible (and should have been produced earlier than it was in accordance with the Council's duty of candour) to explain the basis on which the decision impugned was taken. It is unnecessary to consider whether or not it is admissible for the purpose of providing, or inferring, what the reasons for the decision were given the statutory obligation to produce a record of them, in the light of the principles in *R v Westminster City Council ex p Ermakov* [1996] 2 All ER 302 at p 316-7, as the report does not in any event contain any. Accordingly the Council has also failed to comply with its obligation to provide a written record of the decision including the reasons for it.

47. In these circumstances, and having had regard to section 31(2A) of the Senior Courts Act 1981, in my judgment the decision impugned must be quashed, even if it is assumed that the amended application for approval of reserved matters was one that the Chief Executive could lawfully consider.

WHETHER THE AMENDED APPLICATION FOR THE APPROVAL OF RESERVED MATTERS COULD LAWFULLY BE CONSIDERED

48. Much of the argument during the hearing of this claim was directed at the question whether there was any valid application for reserved matters that the Chief Executive could determine. Both the Council and the Interested Party invited me to consider that issue, even if the decision impugned was otherwise flawed. This invitation was understandable given that, if the decision impugned is simply quashed, the arguments, that there was no valid application that may be determined,

adduced by the Claimant on this claim might be raised again when the application falls to be reconsidered by the Council. That would be pointless if it is clear that there is no valid application that may be considered.

i. submissions

49. On behalf of the Claimant, Ms Olley submitted that there was no in-time application for reserved matters approval and that the outline planning permission has accordingly lapsed. In this case, given the conditions imposed on the grant of outline planning permission, any such application had to be made by February 10th 2017.

50. She submitted that an application for reserved matters cannot alter the nature of the permission granted in outline or contain matters not actually reserved at the outline stage: see *Heron Ltd v Manchester City Council* [1978] 1 WLR 937; *Chalgary Limited v Secretary of State for the Environment* (1977) 33 P&CR 10. As the application in this case had sought approval for layout, which was not a reserved matter, it could not be lawfully entertained. Ms Olley further submitted that the layout on the initial site layout plan and first revised site layout plan was not the same as that in the Site Plan, relying in particular on the points made in the Claimant's second letter to the Council on February 19th 2017 (summarised in paragraph [17] above). Whether that is so is not, so she submitted, a matter of pure law.

51. She further submitted that the various reports have not addressed the Claimant's representations on validity and no reason was given for dismissing them. Although the evidence was now that an amended part of the application form had been delivered to the Council on February 6th 2017 and the initial revised plans had been received before February 10th 2017, it was notable that the proposal that was to be considered was described in the Officer's Report, the Members' Update and the Report to the Chief Executive as one seeking approval *inter alia* for layout. Moreover the Council had not invited further representations once it had disclosed the fact that it had received an amendment to the application form or the second revised site layout plan.

52. On behalf of the Council Mr Langham submitted that the application was either valid or it was not and that the Council was not exercising any judgment which needed to be explained. He contended that, with the receipt of the amended page of the application form and of the first revised site layout plan, the Council had before it an application for approval of reserved matters in relation to appearance, landscaping and scale which satisfied article 6 of the DMPO. The Council immediately consulted on the revised plans when they were received and the Claimant was able to comment on their merits (as he did). The fact that the Claimant may only have learnt of the amendment to the application form and about the second revised layout plan thereafter was immaterial. The Claimant had plenty of time thereafter before the decision was taken by the Chief Executive to make further representations in the light of them but there is no suggestion as to what further representations (if any) he wanted to make after his solicitor's email on March 6th 2017.

53. On behalf of the Interested Party Mr John Dagg submitted that the original application for reserved matters was valid. There was an unfortunate slip in seeking approval in the application form for "layout" but the Supporting Statement that accompanied it clearly stated, correctly, what the application was for and what particular drawings were being submitted for approval of which reserved matters. The original application was one that was within the ambit of the outline permission and in accordance with the conditions subject to which it had been granted. It was within the ambit of that permission: the footprint of the new house was not constrained given that its scale (which includes length and width) had been reserved for subsequent approval.

54. In any event, so Mr Dagg submitted, there is no bar to the amendment of an application for approval of reserved matters. That was done on February 6th 2017 correcting the mistaken tick in the original application form (which had indicated that approval for "layout" was being sought) and substituting a revised Supporting Statement and revised plans. That amended documentation constituted a valid application.

55. It was irrelevant, so Mr Dagg contended, that the detailed footprint of the new house was different from the "illustrative" rectangle on the Site Plan. That plan went only to "layout", not to "scale". The second revised layout plan merely showed the site boundary correctly: the position and scale of the new house and the landscaping and tree details were the same as on the first revised site layout plan. The Claimant had ample opportunity before and after the meeting of the Committee to comment on the proposals: he was not prejudiced if there had been any failure to provide information on the part of the Council.

ii. the substantive limitations on applications for approval of reserved matters and their amendment

56. An application for approval of a "reserved matter" "must be within the ambit of the outline planning permission and must be in accordance with the conditions annexed to the outline planning permission...If the applicant desires to depart in any significant respect from the outline permission or the conditions annexed to it, he must apply for a new planning permission": see *Heron Limited v Manchester City Council* [1978] 1 WLR 937 CA per Lord Denning MR at p944c-d and Orr LJ at p946g; *R v Hammersmith and Fulham London Borough Council ex p Greater London Council* (1985) 51 P&CR 120 CA per Glidewell LJ at p127 and p132. Whether or not the application is within the ambit of the outline planning permission or departs from the requirements of any condition may not depend, however, merely on the interpretation of the outline planning permission and application of reserved matters themselves. Their comparison may also involve questions of planning judgment: see *R v Hammersmith and Fulham London Borough Council ex p Greater London Council* supra per Glidewell LJ at p132.

57. An application for approval in respect of any "reserved matters", however, may be made more than once and may cover only one or some of the matters reserved for subsequent approval or only part of the area which was the subject of the grant of outline planning permission: see *Heron Limited v Manchester City Council* supra per Lord Denning MR at p943g-944b, per Orr LJ at p946g, per Bridge LJ atpp946h-

947d. Moreover not all the particulars plans and drawings that may be necessary to deal with the application need to accompany the application itself for it to constitute a lawful application: they may be submitted later: see *Inverclyde District Council v Lord Advocate* (1982) 43 P&CR 375 per Lord Keith of Kinkel at p396.

58. In *Inverclyde District Council v Lord Advocate* supra the Appellate Committee accepted that an amendment of an application for approval of a reserved matter was permissible generally at any stage but that there were two limitations on this freedom to amend after the expiry of the period limited for such applications: (i) an application which dealt with some only of the specified reserved matters cannot be amended after that date to deal with another specified reserved matter; and (ii) no amendment would be made which would have the effect of altering the whole character of the application so as to amount in substance to a new application: see per Lord Keith at p397. However, subject to those limitations, an application which dealt with a reserved matter "to some extent" may still be amended after that date providing some further or some different details in respect of that reserved matter: see per Lord Keith at p396-7; *R v Newbury District Council ex p Stevens and Partridge* (1992) 65 P&CR 438 per Roch J at p449-450. As Lord Keith of Kinkel stated, in his speech in *Inverclyde District Council v Lord Advocate* supra with which the other members of the Appellate Committee agreed, given the absence of provisions governing how applications for approval of reserved matters are to be dealt with, "this is not a field in which technical rules would be appropriate": see at p397.

iii. whether the application for reserved matters as amended was substantively valid

59. Ms Olley submitted that the mere fact that the application for approval in this case was stated to be for approval of the layout shown on the initial site layout plan of itself rendered the application for approval invalid. In my judgment that is not so. The fact that an application may include matters for which approval cannot be sought does not of itself invalidate what may otherwise constitute a valid application if the addition is severable.

60. Thus, in *Inverclyde District Council v Lord Advocate* supra, the outline planning permission contained a condition that an identified part of the site, substantial in extent, should not be developed for housing but the lay-out plan submitted in the application for approval of reserved matters showed the proposed residential development as extending over that area. At the Inquiry held into the non-determination of that application, the applicant offered to restrict the development so as to exclude that area and the reporter thought it would be proper to grant the application on that basis subject to a minor adjustment of the proposed layout. The House of Lords held that the inclusion of the hatched area for residential development in the application did not invalidate it as an application for approval of reserved matters in respect of the remainder of the site: see per Lord Keith at p395. Lord Keith justified that conclusion on the basis that, notwithstanding what the application had said, it should be regarded, in relation to the hatched area, as a fresh application for planning permission. The severable, remaining part was a valid application. But in my judgment the result can equally and more simply be justified by the reasoning of Lord Wheatley (the then Lord Justice-Clerk) in the Inner House. Although in his view the original application fell outwith the ambit of the outline

planning permission, he could "not see why an application should not be capable of restriction so long as it then falls within the ambit of the outline planning permission": see at p383. Given, as Lord Keith recognised (at p397) that amendments may be made to applications for reserved matters and that "this is not a field in which technical rules would be appropriate", in my judgment to hold otherwise would be overly technical. Such a severable application would meet the requirements of article 6(b) of the Development Management Procedure Order (quoted in paragraph [31] above) and be a valid application as defined for the purpose of that Order, even if it contained other matters that go beyond the matters reserved for subsequent approval.

61. *Chalgary Limited v Secretary of State for the Environment* supra, on which Ms Olley relied, by contrast, involved an application for approval of reserved matters which was simply inconsistent with the grant of outline planning permission. The permission in that case was one which required access to the proposed development to be taken through an existing field gate. The layout plan submitted with the application for reserved matters showed an estate road with access onto a classified road where there was no existing access. Slynn J held that the Secretary of State was entitled to decline to consider the appeal against the refusal to approve the plan which was plainly inconsistent with the terms of the permission: see at p17 and p25. There was no suggestion that the application was severable.

62. In this case, on February 6th 2017, before the expiry of the period for making applications for approval of reserved matters, the Interested Party deleted the reference to "layout" (in the part of the form which identified what approval was being sought for) and substituted new plans for those initially submitted. These restricted the scope of the application and the extent of the footprint of the new house. Ms Olley did not contend that such amendments to the application as those documents effected could not be made competently[3] if the layout in the first revised site layout plan was in accordance with the layout in the Site Plan[4]. Ms Olley drew attention, however, to the fact that the proposal was subsequently described in the Officer's report, Members' Update and the Report to the Chief Executive as seeking approval for layout. That description was undoubtedly an error. It is plain that the Interested Party had amended his application and in fact the notice of the decision on April 24th 2017 did not purport to give approval for the "layout" shown on the plans: it purported to give approval only for appearance, landscaping and scale.

63. In my judgment the substantive question is whether the development in accordance with the first revised site layout plan submitted by the Interested Party on February

[3] She raised issues about the consultation conducted about them which I shall consider below.

[4] While it would no doubt have been simpler had a new form been substituted for the whole of the original form, in my judgment the amended part taken with the Revised Planning Statement and new drawings would also by themselves have constituted an application for the approval of reserved matters meeting the requirements of article 6(a) and (b) of the Order if the layout shown in the drawings was not in conflict with the Site Plan. To be valid the application would have had to have been accompanied by the appropriate fee. However, had the Council treated the initial application as invalid, it would have had to refund the fee originally submitted: see regulation 3 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. As no argument was addressed to me on these points, I express no view on whether the Council could have treated the documents submitted on February 6th 2017, or whether they should be regarded, as being an application themselves if the Interested Party's initial application fell to be treated as invalid.

6th 2017 would be in accordance with the layout on the Site Plan (so that it would be consistent with the requirements of condition (4) imposed on the grant of outline planning permission). Indeed, if it would be, it would have been immaterial had approval been sought, or given, for the "layout" shown on it.

64. The first revised layout plan did not extend to the whole of the site to which the outline planning permission related. Given that an application for reserved matters can relate to part only of that area (as I have explained), the application was one that could nonetheless be entertained provided that what was proposed on the part of that site to which the application related was in accordance with the Site Plan. In my judgment this is of significance when considering the Claimant's objections set out in his letter dated February 19th 2017 and repeated by Ms Olley (which I have summarised in paragraph [17] above).

65. The access to the new house as shown within the main site area is not in conflict with that on the Site Plan. The details shown in relation to the access outside the main site area (to which the application for approval related) in the additional site area showed how the access could be continued to a junction on the public highway as envisaged on the Site Plan.

66. The other objection, that the ratio between "built form" and the site as a whole had been changed, is also affected by recognition that an application may be made for part only of the site to which the outline planning permission related. The comparison which the Claimant drew was between (a) the ratio between the footprint of the proposed dwelling in the Proposed Site Layout Plan and the site to which the permission related and (b) the ratio between "the footprint of the house, hard standing and paved areas" shown on the first revised site layout plan and the area to which it related. Assuming that any ratio involving such "built form" is relevant, however, in my judgment the comparison ought to be between the ratio of "built form" and the main site area on the Site Plan and the initial revised plan.

67. Before considering the objection based on this comparison, however, it is necessary to consider what condition (4), that "the development hereby permitted shall be carried out in accordance with" the Site Plan, involves. At first sight the first revised site layout plan would appear to be in conflict with that Plan. The Site Plan shows a dwelling with a specified length and width located at certain specified distances from various boundaries of the main site area. The first revised site layout plan shows a dwelling of a different length and width located at different distances from the various boundaries of the main site area: see paragraphs [6] and [8] above. Ms Olley has not contended, however, that any such differences of themselves meant that the application for approval was invalid. That is perhaps understandable given (a) that condition (4) has to be construed as part of the permission which was granted in accordance with the application under which that plan was submitted to determine "layout", but which reserved "scale", for subsequent approval and (b) the relevant definitions of those terms for this purpose.

68. Article 2 of the DMPO provides that:

> ""layout" means the way in which buildings, routes and open spaces within the development are provided, situated and

> orientated in relation to each other and to buildings and spaces outside the development;
>
> .....
>
> "scale"..... means the height, width and length of each building proposed within the development in relation to its surroundings".

69. Scale is concerned with the size of a building, its three-dimensional shape, and its relationship to its surroundings: see *MMF (UK) v Secretary of State for Communities and Local Government* [2010] EWHC3686 (Admin), [2011] JPL 1067, per Simon J at [11]; *Crystal Properties (London) Limited v Secretary of State for Communities and Local Government* [2016] EWCA Civ 1265, [2017] JPL 594, per Lindblom LJ at [13] and [31]. "Layout" is concerned with the physical arrangement of buildings, routes and open spaces within the site and with buildings and spaces outside the site[5]. In this context[6] "open space" refers in my judgment to a space free of buildings (as conventionally understood) as does the term "space" in the latter part of the definition of "layout".

70. Given that "layout" can be determined while leaving the "scale" of a building proposed for subsequent approval, however, it must follow that a change in the width or length of a building that appears in the approved "layout" (and thus in its distance from any boundary of the site in respect of which outline planning permission has been granted and the resulting change in residual amount of open space within the site) *may* not conflict with the inter-relationships determined by the approved layout of the development. If it inevitably did, "scale" as such could not be reserved for subsequent approval, and "layout" determined, when planning permission is granted: only "height" could be reserved for subsequent approval when layout is determined.

71. In this case "height" was not all that the application for planning permission, or the planning permission itself, reserved for subsequent approval.

72. But, even if what was reserved for subsequent approval was not limited (in relation to "scale") merely to the "height" of the dwellinghouse, it does not follow that an approved layout may not constrain the length, width and precise siting of any building that may be erected in accordance with it. A building that had a significantly larger footprint or whose precise siting in relation to other features was significantly different from the approved layout plan, for example, might conflict with the arrangement of buildings, routes and open spaces within the site shown on that plan and with buildings and spaces outside it. Even if the scale of a building or buildings is reserved for subsequent approval, therefore, that cannot justify a

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[5] Given that the outline planning permission is for the erection of a building or buildings, the "development referred to in the definition of layout must be a reference to the area the subject of the proposed development, namely the application site area.

[6] Given the context it would be absurd to take "open space" to mean what it is otherwise defined to mean in section 336 of the 1990 Act, namely as "any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground".

material departure from the layout in accordance with which the development must be carried out. Whether or not an application for approval of reserved matters involved such a material departure in the circumstances would involve a matter of planning judgment for the local planning authority.

73. The Claimant stated in his first letter on February 19th 2017 that, when dealing with the scale of the proposed new house shown on the first revised site layout plan, that it had "a similar sized footprint" to that on the Site Plan. He relied in his second letter on his comparison of "built form" on the "significant overall increase in the footprint of the house, hard standing and paved areas". In his view much of the "green area" shown on the latter plan would be covered over by the construction around three sides of the proposed house of extensive areas of "block paving, stone flag paving and a raised terrace".

74. In considering the significance of the "flagstone paved terrace and patio" shown on the first revised site layout plan (but not the Site Plan), it is necessary to bear in mind that one of the matters reserved for subsequent approval (which that Plan did not determine) was "landscaping". Article 2 of the DMPO provides that:

> "landscaping", in relation to a site or any part of a site for which outline planning permission has been granted...means the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes—
>
> (a) screening by fences, walls or other means;
>
> (b) the planting of trees, hedges, shrubs or grass;
>
> (c) the formation of banks, terraces or other earthworks;
>
> (d) the laying out or provision of gardens, courts, squares, water features, sculpture or public art; and
>
> (e) the provision of other amenity features".

75. In my judgment the formation of a "flagstone paved terrace and patio" may properly be regarded as the treatment of land for the purpose of enhancing the amenities of the site for the occupants of the proposed new house and thus something capable of being approved as part of the "landscaping" of the site. There is no reason why an amenity feature may not have a hard surface (as, for example, a garden path or a tennis court may do). Moreover the fact that an area is hard surfaced would not mean that it ceased to be "open space" (as opposed to a building) when considering the "layout" of the proposed development: see paragraphs [68] and [69] above.

76. In my judgment, therefore, the question in respect of the first revised site layout plan is whether the increased footprint, and different location for the house in relation to the boundaries of the main site area, proposed resulted in an arrangement of buildings, routes and open spaces within the site and with buildings and spaces

outside it that involved a material departure from the arrangement shown on the Site Plan. The answer to that question involves a matter of planning judgment.

77. Such a judgment might be informed by a comparison between the ratio of the footprints of the house shown on each plan to the main site area. But it would not necessarily be determined by it. It might also need to consider the significance to be attached to the various dimensions marked on the Site Plan in the context of the nature of the development, the site to which the outline planning permission related and its surroundings.

78. In the Claimant's Summary Reply to the Council's Summary Grounds at [12] and [20], he contended that the layout in the two plans was not the same and it was not reasonable to assert that they were. In its detailed grounds the Council asserted that the layouts were the same or "alternatively" that it was a matter for the Council's judgment whether the differences in length and width of the buildings shown on the plans went to the scale, as opposed to the layout, of the development. No explanation was provided for the first assertion and no explanation of why the differences might not go to layout as well as scale. In his witness statement Mr Leigh stated that officers considered that the layout shown on the first revised plan "was the same as that" on the Site Plan. But he provided, however, no reasons explaining the basis for that judgment.

79. Given that the question whether the proposed layout on the first revised site layout plan was in conflict with that shown on the Proposed Site Layout Plan was a substantial point raised by the Claimant in his representations, in my judgment the Council were obliged to provide reasons for rejecting his contentions on that issue and to explain why they were not in conflict (if that was indeed the Council's view formed by someone with the delegated authority to do so). No reasons were provided on this or other issues as required (as I have explained). Given that the decision granting approval is to be quashed in any event, I prefer to express no view on whether the Council could lawfully have reached the conclusion (if they did) that the layouts were not in conflict in the absence of any reasoned explanation of the decision by the person authorised to take it. Such a statement of reasons may have to be given when the matter is reconsidered.

80. The second revised site layout plan was submitted by way of amendment to the application for reserved matters after the expiry of the period within which such applications were required to be made by condition (2) imposed on the grant of outline planning permission. In my judgment it is clear that the red line which this revision introduced was intended to mark the revised boundary of the site to which the application related (as the note on it indicated) so as to include the additional site area. Unfortunately the line on the first revised plan identified as the site boundary was not removed on the second. But, given the apparent conflict in its location in relation to the additional site area, in my judgment the site boundary should be taken to be that shown as last added to the drawing, namely the red line, as that plainly indicates the intended boundary. The details within the additional site area thus included within the application were identical to those shown outside the site boundary in this area on the first revised layout plan and those within the main site area.

81. In my judgment this was an amendment that was validly made notwithstanding the expiry of the time limit for making applications. All the details shown within the additional site area related to reserved matters that were already dealt with "to some extent" in the application before the expiry of the limit: see paragraph [58] above[7].

82. Accordingly in my judgment the question whether the application for approval of reserved matters as amended was valid depends on whether the Council consider, not unreasonably, that the "layout" shown on the second revised plan is not in conflict with the "layout" shown on the Site Plan in accordance with which the development permitted must be carried out. That will require consideration of whether the increased footprint and different location for the house proposed resulted in an arrangement of buildings, routes and open spaces within the site and with buildings and spaces outside it that involved a material departure from the arrangement shown on the Site Plan. The answer to that question involves a matter of planning judgment.

iv. whether the application for approval as amended complied with any procedural requirements

83. As explained above, there is no requirement in the DMPO itself that anyone need be given notice of an application for approval of reserved matters and invited to make any representations thereon. No direction under article 34(8) of that Order, no policy of the Council, whether contained in any Statement of Community Involvement or otherwise, and no practice of the Council requiring such notice to be given was drawn to my attention by the parties. However it is well established that, whether or not consultation is a legal requirement, if it is embarked on, it must be carried out properly by a public authority and the applicable principles of fairness are no different from those that apply if the consultation is statutory: see eg *R. v North and East Devon Health Authority ex p Coughlan* [2001] QB 213 per Lord Woolf MR, giving the judgment of this court at [108].

84. In this case the Council embarked on a process of consultation. They posted a site notice and informed interested parties locally including the Claimant that the application for reserved matters had been made and invited representations. They did so again when they posted a further site notice on February 7th 2017, and informed such parties including the Claimant on February 8th 2017, that revised drawings had been submitted,.

85. Unfortunately the revised proposal appears to have been described on the site notice and in such letters as still involving an application for approval *inter alia* of layout. Moreover the amended part of the application form, the revised supporting statement and the second revised layout plan were not placed on the Council's website until after the time for making representations had expired. The Claimant was not aware of all of these additional documents until March 6th 2017.

86. Ms Olley submitted that, until March 6th 2017, there was nothing to put the Claimant or other interested parties on notice that layout was not to be considered as

[7] It also follows that a further application clarifying the area to which the application relates could still be submitted after the decision impugned is quashed if I am wrong about the effect of the revision.

part of the application. Although the decision was deferred on March 6th 2017, the Council failed to invite further representations.

87. On behalf of the Council Mr Langham submitted that the Claimant had been able to comment on the revised proposals on their merits in detail and had done so and the fact that the Claimant was unaware of the amendment to delete "layout" from the list of matters for which approval was sought and of the second revised plan until after the period for making representations had expired, was irrelevant. The deletion of "layout" did not cause the substantive contents of the drawing on which he was able to comment to change nor did the extension of the site boundary shown on the second revised layout plan. There was nothing that he could usefully have added on the merits. The fact that he and his solicitors had made representations after the period for making them had expired showed that they did not feel inhibited from doing so for that reason, and, had they any further representations to make, they could have made them at any time after March 6th 2017 before the Chief Executive had taken her decision weeks later, in April that year. The Claimant was not materially prejudiced.

88. Since the decision of the Chief Executive falls to be quashed in any event, I shall state my conclusions shortly. It is necessary, in order for any consultation to be fairly conducted, that those consulted know on what they are being consulted. In this case the Claimant and others did not know either about the amendment and the second revised layout plan during the period for making representations. Ms Olley failed to persuade me, however, that the substitution of the second for the first revised layout plan meant that the Claimant was prejudiced in the representations that he might have wished to make on the planning merits of the amended drawings. The position is less clear, however, about the deletion of "layout" from the application with the substitution of the second revised layout plan. The Claimant was not offered the opportunity to reformulate any objections that he may have had to the revised plan including the additional site area in the knowledge that the Interested Party was claiming that it did not require its layout to be approved. That might have caused him to consider whether to make, and to make, additional representations, on whether the "layout" on the second revised plan was in conflict with the "layout" on the Site Plan. He did not have that opportunity. In my judgment it is not satisfactory for the Council merely to say that in fact he had the opportunity after March 6th 2016 to make such representations when they had previously told him that the period for making them had ended. The question is, however, whether he has suffered any material prejudice. Ms Olley has not identified any such representations that he would or could have made had he been given that opportunity or any other practical detriment the Claimant suffered by being deprived of it.

89. For these reasons in my judgment the application was one that could lawfully have been considered by the Chief Executive if it was substantively valid.

CONCLUSION

90. For the reasons I have given,

(1) the decision by the Council's Chief Executive to approve the Interested Party's application for approval of reserved matters as amended must be quashed in any event; and

(2) the question whether there was a valid application for approval of reserved matters as amended that the Council may determine depends on whether the Council consider, not unreasonably, that the "layout" shown on the second revised plan is not in conflict with the "layout" shown on the Site Plan in accordance with which the development permitted must be carried out. That will require consideration of whether the increased footprint and different location for the house proposed resulted in an arrangement of buildings, routes and open spaces within the site and with buildings and spaces outside it that involved a material departure from the arrangement shown on the Site Plan.

(3) The answer to that question involves a matter of planning judgment and is a matter that will require consideration when the application is reconsidered in the light of this judgment.