Neutral Citation Number: [2025] EWHC 2395 (Admin)

Case No: AC-2024-CDF-000147

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

Cardiff Civil and Family Justice Centre
2 Park Street, Cardiff
CF10 1ET

Date: 24/09/2025

Before :

MR JUSTICE EYRE

- -

Between:

THE KING	**Claimant**
On the application of	
ENLLI ANGHARAD WILLIAMS	
- and -	
CYNGOR GWYNEDD	**Defendant**

- -
- -

MATTHEW HENDERSON (instructed by **BROWNE JACOBSON**) for the **Claimant**
JOHN HUNTER (instructed by **CYNGOR GWYNEDD**) for the **Defendant**

Hearing date: 23rd June 2025

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Approved Judgment

This judgment was handed down remotely at 10am on 24 September 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Eyre :

Introduction.

1. By its decision of 16th July 2024 ("the Decision") the cabinet of the Defendant confirmed the deferred decision made a year previously making a direction pursuant to article 4 of the Town and Country Planning (General Permitted Development) Order 1995 ("the GPDO"). The Claimant challenges the Decision pursuant to permission given by Pepperall J on the sole ground that in making Decision the Defendant did so on a mistaken basis.

2. The effect of the Decision was to remove permitted development rights which otherwise provided that a change of use between class C3 (primary residences) and C5 (second homes) or C6 (short-term holiday lettings) or a mix of those uses was permitted development. As a consequence changes between those classes which was otherwise development, as a consequence of being a material change of use, would require planning permission. The Decision does not alter the position that changes which are not otherwise development do not need planning permission. Therefore, a change of use between those classes which is not a material change of use does not need planning permission regardless of the Decision.

3. The Claimant challenges the Decision on one ground. She contends that the members of the Cabinet were misled by the Officers' Report in material respects. They were, she claims, led to believe that the effect of approving the article 4 direction would be that all changes from primary residence to second home or to short-term letting or to mix of those uses would require planning permission. The members of the Cabinet were not alerted to the fact that such of those changes which did not amount to material changes of use would remain outside the Defendant's control. The extent of the control given by the article 4 direction was, the Claimant says, a material consideration. She says that as a consequence the members were misled in a material respect and failed to take account of a material consideration.

4. The Defendant says that when read properly the Officers' Report and the accompanying papers adequately informed the members of the Cabinet of the effect of the article 4 direction. It was clear that not all changes of use would be brought under the Defendant's control and that the effect would solely be the removal of permitted development rights. Alternatively, the Defendant says that this is a case where the court can be confident that the same decision would have been made even if the limited effect of the article 4 direction had been spelt out. As a consequence section 31(2A) of the Senior Courts Act 1981 requires that relief be refused.

5. The crucial question is that of the proper reading of the Officers' Report and the accompanying material. The answer to that will determine whether the Cabinet proceeded on a false basis. Depending on the answer to that it may then be necessary to consider the operation of section 31(2A).

The Legal Background to the Decision.

6. By section 57(1) of the Town and Country Planning Act 1990 ("the TCPA") planning permission is required for the development of land. By virtue of section 55(1) "development" for these purposes includes the making of a material change in the use of any buildings or land. However, by section 55(2)(f) the use of buildings or land for

a different purpose within the same use class shall not be taken to involve development.

7. The different classes of use are set out in the Town and Country Planning (Use Classes Order) 1987 ("the UCO").

8. A change of use from one use class to another is not development (and so does not require planning permission) unless it is a material change of use. As Holgate J (as he then was) explained in *Ipswich BC v Fairview Hotels (Ipswich) Ltd* [2022] EWHC 2868 (KB) at [69] – [71]:

> "69. The making of a change of use of itself does not amount to development. That depends upon whether the change is 'material' in terms of planning considerations. Planning considerations are to do with the character of the use of land. … The issue of whether a material change of use takes place is one of fact and degree. But what has to be considered is the character of the use of the land, not the particular purpose of a particular occupier (*Westminster City Council v Great Portland Estates plc [*1995] AC 661 at 669G). …
>
> 70. The UCO has been made pursuant to s. 55(2)(f) of the TCPA 1990 to exclude from the definition of development, and hence the requirement to obtain planning permission, changes between a use for one purpose and the use for any other purpose within the same Use Class (see also Article 3(1) of the UCO). …
>
> 71. However, it is important to bear in mind that the UCO simply defines certain changes of use so that they are not to be treated as development. The Order does not operate so as to treat a change from a use within a Use Class to another use outside that Class as a material change of use (*Rann v Secretary of State for the Environment* (1979) 40 P&RC 113). … The UCO cannot be used to treat that change as representing in itself a material change in the use of the land. Whether that is so will depend on a case-specific assessment of the effect of the change on the character of the use of the land, in other words, the planning consequences of the change."

9. The UCO was amended by the Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2022. The amendment introduced two new use classes, class C5 and class C6, the effect of that, as Pepperall J explained when giving permission in this case, is that:

> "there are now three classes of use for dwellinghouses in Wales:
>
> - class C3, being dwellinghouses used as a main residence and occupied for more than 183 days in a calendar year;
> - class C5, being dwellinghouses used otherwise than as a sole or main residence and occupied for 183 or fewer days; and
> - class C6, being dwellinghouses that are commercially let for short terms not exceeding 31 days.
>
> Put more colloquially, the amended UCO distinguishes between primary residences (C3); second homes (C5); and short-term holiday lets (C6)."

10. The GPDO sets out those matters of development which are permitted without the need for planning permission.

11. At the same time as the UCO was amended the GPDO was amended by the Town and Country Planning (General Permitted Development etc)(Amendment)(Wales) Order 2022. By article 3(1) and schedule 2 paragraph 1 this provided that a change between

classes C3 and C5 or C6 or to a mixed use combining class C3 use with class C6 or to a mixed use combining class C5 use with class C6 use was permitted development.

12. Article 4 of the GPDO empowered a local planning authority to remove those permitted development rights in these terms:

> "(1) If the Welsh Ministers or the appropriate local planning authority are satisfied that it is expedient that development described in any Part, Class or paragraph in Schedule 2, other than Class B of Part 22 or Class B of Part 23 should not be carried out unless permission is granted for it on an application, [...] 3 they may give a direction under this paragraph that the permission granted by article 3 shall not apply to—
>
> (a) all or any development of the Part, Class or paragraph in question in an area specified in the direction; or
>
> (b) any particular development, falling within that Part, Class or paragraph, which is specified in the direction,
>
> and the direction shall specify that it is made under this paragraph."

13. The background to and the purpose of the amendments to the GDPO was explained thus in the Explanatory Memorandum at [4.1] – [4.5]:

> "4.1 The Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2022 ("the Use Classes Amendment Order 2022") amends Part C of the Schedule to the Town and Country Planning (Use Classes) Order 1987 ("the UCO") by amending use class C3 (dwelling houses) to (dwellinghouses; used as sole or main residences) which limits the use as a dwellinghouse as a sole or main residence, which is occupied for more than 183 days in a calendar year (i.e. "primary homes"). It also introduces two new use classes, use class C5 (Dwellinghouses; used otherwise than as sole or main residences) which covers use as a dwellinghouse other than as a sole or main residence and occupied for 183 days or fewer in a calendar year (i.e. 'second homes'); and use class C6 (Short-term lets) which covers use of a dwellinghouse for commercial short-term letting not longer than 31 days for each period of occupation. This provides a new legislative framework for managing the use of dwellinghouses in Wales.
>
> 4.2 The GPDO Amendment Order 2022 introduces new permitted development rights for changes of use of properties within use class C3 (Dwellinghouses, used as sole or main residences), new use class C5 (Dwellinghouses; used otherwise than as sole or main residences) and new use class C6 (Short-term lets). Specified changes of use to and from a mixed use are also introduced.
>
> 4.3 Not every local authority has concentrations of second homes and/or short-term lets, or has concerns with such uses. The amendments to the UCO may therefore create unnecessary resource pressures for many local planning authorities as a result of an expected increase in the volume of planning applications for changes of use, which is out of proportion to the scale of any concerns they have with such uses.
>
> 4.4 The GPDO Amendment Order 2022 permits unlimited changes of use between the use classes for a primary home (use class C3), second home (use class C5) or a short-term let (use class C6). Where they have the appropriate evidence, local planning authorities would be able to issue a direction using Article 4 of the GPDO to remove these permitted development rights and may require planning applications (where the local planning authority can show that a material change of use has occurred) for the specified change of use. In all other cases, changes of use would be permitted by the GPDO.

> 4.5 This approach could enable local planning authorities to put in place local solutions in areas that have concentration of second homes and short-term lets without imposing an unnecessary burden on unaffected areas and property owners. Changes of use between primary homes, second homes and short-term lets can take place freely unless the local planning authority considers such development would pose a real or specific threat to a particular area. In addition, the permitted changes of use ensure properties in use as second homes or short-term lets can return to primary homes for occupation by the local population without impediment, particularly in areas where there are localised housing pressures."

14. The making of an article 4 direction, therefore, restores to a local planning authority the control which was removed by article 3(1) and schedule 2 paragraph 1 of the 2022 Amendment Order. It does not bring within the ambit of planning control changes of use which are not development (and so do not need planning permission) because they are not material. Such changes did not require planning permission before the amendment of the UCO or the GPDO. They were unaffected by the amendment of the GDPO and are unaffected by the making of an article 4 direction.

15. In the context of the change of use of dwelling houses to use as second homes or for holiday lettings the making of the article 4 direction will mean that where such changes amount to material changes of use they will need planning permission. However, where such a change does not amount to a material change then it will not be development and can be made without planning permission regardless of the making of the article 4 direction. In that context it is necessary to have regard to the analysis set out by Sullivan LJ, giving the judgment of the court, in *Moore v Secretary of State for Communities and Local Government* [2013] JPL 192 at [27] thus:

> "Starting from first principles, without the assistance of any authority, whether the use of a dwelling house for commercial letting as holiday accommodation amounts to a material change of use will be a question of fact and degree in each case, and the answer will depend upon the particular characteristics of the use as holiday accommodation. Neither of the two extreme propositions- that using a dwelling house for commercial holiday lettings will always amount to a material change of use, or that use of a dwelling house for commercial holiday lettings can never amount to a change of use-is correct."

16. At [33] and [34] Sullivan LJ explained the court's acceptance of the view that the correct approach was to proceed on the basis that there could be some degree of holiday letting without a change of use from being a main residence and to ask "whether there [is] anything about the particular characteristics of the holiday lettings in the [particular] case which [amounts] to such a change".

The Approach to be taken to Article 4 Directions.

17. In considering whether to make an article 4 direction a local planning authority had to take account of the purpose of the amendments to the GPDO and of article 4 directions as set out in the Explanatory Memorandum. In addition Appendix D of the DOE Circular 22/88 provided guidance in these terms:

> "Article 4(1) and the new article 4(2) of the Permitted Development Order enable local planning authorities to make directions withdrawing permitted development rights given under Schedule 2 to that Order. However, permitted development rights have been endorsed by Parliament and consequently should not be withdrawn locally without compelling reasons. Generally and subject to the guidance in this Appendix, permitted

> development rights should be withdrawn only in exceptional circumstances. Such action will rarely be justified unless there is a real and specific threat, ie there is reliable evidence to suggest that permitted development is likely to take place which could damage an interest of acknowledged importance and which should therefore be brought within full planning control in the public interest."

18. On 28th September 2022 the Minister for Climate Change wrote to the Heads of Planning of the local planning authorities in Wales in order to introduce the changes being made by the amendments to the UCO and to the GPDO. The minister also drew attention to complementary changes being made in Planning Policy Wales. In relation to article 4 directions the minister said:

> "It will be for each local planning authority to decide, based on local circumstances, whether they wish to pursue the possible introduction of an Article 4 Direction to remove the permitted development rights for changes between the new use classes. Any such Article 4 Direction will need to be supported by robust local evidence highlighting the impact of second homes and short-term lets on specific communities as part of a co-ordinated response which applies all available interventions to an area and will need to evidence effective community consultation."

19. In addition to that guidance it is to be noted that the making of the article 4 direction would have an impact on the property rights of the owners of dwelling houses in the affected area. As a consequence regard was to be had to their rights under article 1 of the First Protocol of the European Convention on Human Rights. The Defendant had to have regard to the need for any interference with those rights to be proportionate. That question was to be approached by reference to the four-stage test set out by Lord Reed in *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39, [2014] AC 700 at [74]. As Lord Reed explained there the decision maker has to consider:

> "… (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter… In essence, the question at step four is whether the impact of the rights infringement is disproportionate to the likely benefit of the impugned measure."

The Background to the Decision and the Material before the Cabinet.

20. The Decision was preceded by a lengthy period of consideration and by detailed consultation.

21. A high proportion of the dwelling houses in Gwynedd are used for commercial holiday letting or as second homes. The research paper considered by the Cabinet in December 2020 "Managing the use of dwellings as holiday homes" explained that in the summer of 2020 10.76% of Gwynedd's housing stock consisted of such properties compared to a figure of 2.56% for Wales as a whole. The effect of the high proportion of holiday lettings and second homes in Gwynedd was to reduce the proportion of the housing stock available for full time occupation by those living permanently in the County. It also had an impact on property prices and, accordingly, on the affordability of accommodation. The paper justifying the introduction of the article 4 direction to the Cabinet in July 2024 described this as "a real threat to the social, cultural and

economic prosperity of communities across Gwynedd". In the context of Gwynedd there was particular concern that the presence of a high proportion of holiday lettings and second homes ran counter to the important objective of protecting and maintaining Welsh-speaking communities. The ability of property owners to change the use of dwellings from primary residences to holiday lettings and second homes without planning permission meant that the Defendant had no control over such changes and, accordingly, no control over the effect of such changes on the housing stock.

22. The research paper considered in December 2020 addressed the difficulties which the use of dwellings as holiday homes could cause and considered potential ways in which the problem could be addressed. At [3.2] and following the paper gave a detailed explanation of the operation of section 55 of the TCPA and the operation of the UCO. The paper explained in terms that it was only when a change of use was material that planning permission was required. It explained in some detail, by reference to the decision in *Moore* and to the decisions of planning inspectors applying the approach which the Court of Appeal had set out there, that the question of whether the change of use from a dwelling house to a commercial holiday letting was a material change of use was a matter of fact and degree to be determined by reference to the circumstances of the particular case. The paper also explained some of the difficulties and delays which can be involved in taking enforcement action in respect of breaches of planning control. The paper considered the position in respect of properties in multiple occupation and the scope for levying increased council tax on second homes. The paper culminated in a series of recommendations. One of these was that a separate use class be created for short-term holiday accommodation. It was said, at [10.16], that this would be "a means of overcoming any doubt as to when a change of use has occurred" and that "by having a specific use class for holiday accommodation planning permission would have to be granted for the use". Although the authors of the paper had set out an accurate summary of some of the applicable principles of Planning Law they appear to have assumed that a change of use from one class to another would necessarily require planning permission. The correct position is that such a change does not amount to development and so does not require planning permission unless it is a material change (see [8] above).

23. The UCO and the GPDO were amended in 2022 as set out above. The amendments came into effect in October 2022 and in the same month a report was presented to the Defendant's Communities Scrutiny Committee. The purpose of the report was to inform that committee of the changes which had come into effect the same month and, in particular, the provision for the making of an article 4 direction. The report explained, at [3.6], that the making of such a direction would remove the right to change between use classes without planning permission. It emphasized that an article 4 direction would not prevent development but would mean that planning permission would have to be sought for development.

24. The Communities Scrutiny Committee considered the matter again in March 2023 at which stage the making of an article 4 direction was described as being "the favoured option". At [2.1] the report to that committee said that the making of an article 4 direction "would mean that planning consent would be required to use [a] residential dwelling as a second home/holiday accommodation in the future". At [3.3.1] the report addressed the scope of the proposed article 4 direction. The tenor of the

explanation given there was that any change of use from class C3 to class C5 or C6 would require planning permission and there was no indication that this would only be the case in respect of material changes of use.

25. On 13th June 2023 the Cabinet approved the making of the article 4 direction with deferred effect. The decision at that stage was that the direction would come into effect on 1st September 2024 subject to being confirmed. The public notice of that decision stated that certain permitted development rights were being removed and that development to which such rights had attached would require planning permission after the coming into force of the direction.

26. The public notice was accompanied by a letter sent by the Defendant to local residents. Under the heading "how does this affect you?" the letter said:

> "If the Article 4 Direction is confirmed, and you own a residential dwelling (which is a main home) within the Gwynedd Local Planning Authority Area and wish to change the use to a second home, short term holiday let or specific mixed use, you **will be required to obtain planning permission** from Cyngor Gwynedd Local Planning Authority before undertaking the change of use." (original emphasis)

27. In her evidence Heledd Fflur Jones, a planning policy team leader for the Defendant, said that council members were "familiar with the planning policy framework". To substantiate this the officer referred to a session to raise awareness which had been held for local members after the Cabinet decision of June 2023 to give initial notice of the article 4 direction and also to a question and answer session held for the members of the Cabinet and of the Communities Scrutiny Committee in May 2024. She said that a question was asked as to how planning applications would be dealt with in light of the article 4 direction. Miss Jones said that the answer referred to the Local Development Plan and the Supplementary Planning Guidance. No further detail is given in the witness statement and there is no indication that it was explained in this session that changes between classes C3 and C5 and C6 which did not amount to material changes of use would not require planning permission even after the making of the article 4 direction.

28. There was a period of public engagement after the June 2023 decision and the results of that were reported to the Cabinet as I will describe below.

29. The matter then came before the Communities Scrutiny Committee on 16th May 2024. The report to that committee said that it was "hoped that introducing the Article 4 Direction will provide an opportunity to assess the propriety of any proposal that involves changing the use of a residential home to holiday use, be that use as a holiday let or a second home." The Communities Scrutiny Committee recommended that the Cabinet confirm the direction and the matter went back to the Cabinet.

30. The Cabinet considered the issue on 16th July 2024. The Officers' Report was accompanied by a report on the public engagement exercise; an impact assessment; and a "paper justifying the introduction of the Article 4 Direction."

31. The following parts of the Officers' Report are of note:

    i) At [1.5] and [1.6] it said:

> "1.5 If deemed appropriate, in order to restrict and gain control of the unrestricted change of use between the new use classes, the Local Planning Authority has the power to introduce what is called an Article 4 Direction for a specific area. An Article 4 Direction (depending on its content and scope) would remove the rights to switch between the use classes without planning permission. An Article 4 Direction can be implemented for the whole Local Planning Authority Area, provided it can be evidenced that there are exceptional circumstances that justify it and that the process of presenting and receiving approval to the proposal has followed the correct procedures. Those procedures are set out in the relevant legislation.
>
> 1.6 It is emphasised that making an Article 4 Direction does not prevent development but rather, it means that planning permission must be sought from the Local Planning Authority for the proposal. Enforcing the requirement to obtain planning permission, means that the impacts of the development must be considered in accordance with the local and national planning policy context".

ii) At [4.5] the report said:

> "The Assessment highlights that it is difficult to predict the impact of implementing the Article 4 Direction as taking this form of action is unprecedented. However, it is noted that the social inequality that currently exists in some communities in light of the lack of affordable housing along with house prices that are beyond the reach of Gwynedd residents is creating an unsustainable divided society. In an effort to seek to overturn the current situation it is hoped that introducing the Article 4 Direction, will provide an opportunity to assess the propriety of any proposal that involves changing the use of a residential home to holiday use, be that use as a holiday let or a second home. …"

32. The report on the public engagement exercise was divided into thirty-seven "themes". Each of these addressed a topic which had been raised in the engagement exercise and provided a summary of the comments which had been made together with the Defendant's response to the comments. The following are of note for current purposes:

i) In the Defendant's response to the theme 2 concern that the direction was unjust as placing additional restrictions on the use of people's homes it was explained that the purpose of the direction was to remove the permitted development rights given by the amendments to the GPDO and "to ensure that planning consent is required in order to undertake some specific change of use developments". It was said that this would "ensure better control of the housing stock".

ii) A similar point was made in the Defendant's response to the theme 3 concern that the proposal was the wrong response to the housing crisis. There it was said that "the ability to freely transfer between uses means that there is no effective control over the existing housing stock" and that it was "considered that a mechanism must be implemented to provide better control over the existing housing stock".

iii) Theme 7 addressed the concern that the direction was an unwarranted interference with the human rights of home owners. In the Defendant's response it was acknowledged that the direction amounted to an interference

with the Article 1 Protocol 1 rights of home owners. However, it was said that the Defendant believed that the interference was proportionate and justified in light of the "overall interest of the people of Gwynedd". The response then made a similar point to that made in respect of theme 3 to the effect that "it would still be possible to apply for planning permission as a second home or holiday let".

iv) Theme 9 addressed concerns which had been expressed about the effect on those who inherited properties in Gwynedd. The Defendant's response was that any existing use could continue but that if those inheriting a residential property wished "to use [it] for an alternative use ie use as a second home (C5 use) or let it as short-term holiday accommodation (C6 use) then planning consent must be obtained for that use".

v) Theme 11 addressed the concerns which had been raised about the difficulty in obtaining mortgages. Concerns were also raised included the impact on property values and the rights of property owners. There was concern that there would be a fall in the value of properties with the risk for some of falling into negative equity. This was connected with the concern that it would be harder to obtain mortgages on properties in Gwynedd. The Claimant sets out her particular concerns about the effect of this but it is apparent from the summary of the responses to the engagement exercise that she is not alone in having such concerns. The Defendant's response to this appears recorded that the same concern did not appear to have been raised in other local authority areas where interventions of various kinds had been made. However, the response records a professional opinion the Defendant had obtained from a local mortgage provider which was supportive of the view that the direction would mean that it would be more difficult to obtain mortgages. The response then noted that "no tangible evidence was provided to support" that professional opinion.

vi) Theme 13 addressed a concern that the introduction of the direction would punish local people while having no impact on existing second home owners. The Defendant's response began by saying:

> "The Article 4 Direction does not discriminate between different groups of people (e.g. local, visitors). It will be implemented fairly and consistently amongst everyone who owns properties in classes C3, C5 or C6. Its purpose is to remove specific aspects of the permitted development rights for these particular use classes, ensuring that everyone will be required to apply for planning permission."

vii) Theme 34 addressed concerns that flexibility was required with and that a different approach should be taken in relation to local people or those who were Welsh-speaking. The Defendant's response explained that it was not possible to implement the article 4 direction such as to take a different approach to those with local connexions from that which was applied to others. It then said:

> "The need to obtain planning consent to change the use of a residential house to a second home, holiday accommodation or relevant mixed uses will be based on concluding that the proposed use leads to a change of material use. Each case will be treated individually and, as a result, it is not possible to provide a definite

> response in terms of when change of use is tantamount to being a change of material use."

Although the reference there was to "a change of material use" rather than to "a material change of use" Mr Hunter explained, on instructions, that this was the result of an error in translation from the Welsh version of the document. The Welsh version used the Welsh terms for "a material change of use" and it was the Welsh version of the document which was sent to and used by the members of the Cabinet. I will proceed on that basis.

33. At [1.13] the paper justifying the introduction of the Article 4 Direction emphasized that the effect of such a direction was not to prevent development but to require planning permission to be obtained. That comment had been preceded by reference to the 2022 amendments to the GPDO and to the UCO saying that the amendments:

> "…mean that it is possible to change from the use classes referred to above without restriction, that is without having to receive planning permission. For example, it is not be necessary to receive planning permission to change from being a dwelling house (main home) to being a dwelling house (secondary home) and vice versa."

34. At [1.2] the impact assessment explained that the intention was to remove permitted development rights and said that this meant that after the implementation of the direction:

> "… there will be a need to obtain planning permission to change the use of a residential home that is a main residence (C3 use) to a second home (C5 use) or holiday accommodation (C6 use)."

Discussion and Analysis.

35. The principles to be applied in considering whether the members of the Cabinet were materially misled by the Officers' Report were summarized by Lindblom LJ in *R (Mansell) v Tonbridge & Malling BC* [2017] EWCA Civ 1314, [2019] [PTSR] 1452 at [42], to which summary is to be added the warning of Sir Geoffrey Vos at [62]. Reports are "not to be read with undue rigour but with reasonable benevolence". They are to be read as a whole and there is to be a "fair reading of the report as a whole". There will only be a public law failing if the members have been materially misled. The members will only have been materially misled if the report is "significantly or seriously misleading" on a "matter bearing on their decision" such that the decision might have been different but for the flawed advice. The court should not engage in a "legalistic analysis of the different formulations adopted in a planning officer's report". I was also referred to judgments of Sales J (as he then was) in *R (Maxwell) v Wiltshire Council* [2011] EWHC 1840 (Admin) at [43] and of Sullivan LJ in *R (Siraj) v Kirklees Metropolitan Council* [2010] EWCA Civ 1286 at [19]. Both of those preceded Lindblom LJ's summary in *Mansell* and were making the points which were later set out in that summary albeit in slightly different language.

36. Here the Claimant is asserting that the Officers' Report and the accompanying documents were materially misleading. It is, therefore, for the Claimant to establish that proposition on the balance of probabilities. It is not enough for the Claimant simply to raise a doubt as to the adequacy of the material (see per Sir Duncan Ouseley in *Safe Rottingdean Ltd v Brighton and Hove Council* [2019] EWHC 2632 (Admin) at

[84]). What is necessary is that the material be found, on a reading in accordance with the preceding principles, to have been materially misleading.

37. When considering whether an Officers' Report was materially misleading account is to be taken of the readership. Those to whom such a report is addressed are not planning lawyers nor specialist planning consultants but nor are they novices with no knowledge of or understanding of the system of planning control. The adequacy of the explanation contained in a report is to be considered against the background of the knowledge of the readership (see *R v Mendip DC ex p Fabre* [2017] PTSR 1112 per Sullivan J, as he then was, at 1120). Account is to be taken of the fact that the members reading the report will have local knowledge.

38. The knowledge of the readership of a report is a matter of particular note when it is addressed to the members of a planning committee. Such members not only have local knowledge of the factual background but also a degree of knowledge of "development planning policies or matters of planning history" (*Fabre supra)*. In addition in the context of a planning committee "the members themselves can be expected to acquire a working knowledge of the statutory test" (per Pill LJ in *R v Selby DC ex p Oxton Farms* at [2017] PTSR 1103 1110 G in the context of the statutory requirement that planning applications be determined in accordance with the relevant development plan subject to material considerations to the contrary).

39. Here the Decision was made by the Cabinet of the Defendant and not by its planning committee. I proceed on the basis that the members of the Cabinet would have had involvement in some planning matters from time to time (the Decision is an instance of this). However, they would not have had the regular, repeated, and detailed involvement which the members of the planning committee would have had and which was the kind of involvement which would have given the members of that committee the "working knowledge" to which Pill LJ referred. It cannot be assumed that the members of the Cabinet had a working knowledge of the definition of development for the purposes of the TCPA without being reminded of it. It cannot, therefore, be assumed that they would have known, without being told, that only material changes of use fell within the control of the planning system and that the removal of permitted development rights would not enable the Defendant as local planning authority to control the change of use from a dwelling house to use as a second home or for commercial holiday letting unless that amounted to a material change of use.

40. Taking account of the readership of the reports must also take account of the approach which those readers can be expected to have taken to the reports. Here the members of the Cabinet are to be taken to have read the Officers' Report and the accompanying documents with care and to have had due regard to the seriousness of the decision being made. Regard must also be had, however, to the pressures on their time (see in that regard Sullivan J's point in *Fabre* that it is important for a busy committee not to be over-burdened with excessive or unnecessary detail). Here, the Officers' Report and the accompanying papers in relation to the Decision ran to 200 pages. The Cabinet members were not reading the Officers' Report and the other documents in the way in which a lawyer would study a contract or a statute. Instead, they were reading those documents with a view to receiving guidance on the nature and effect of the decision to be made; the test to be applied; the issues to be considered; and the factors which were to be taken into account.

41. The Cabinet members did not need to put into a position where they could write a legal analysis of the operation of the article 4 direction. However, they did have to know the nature and effect of the decision being made. That required them to know, at least in broad terms, what that effect was and what it was not. They needed, therefore, to be informed, again in general terms, which changes would be controlled after the making of the direction and which would not be. That was because one of the matters which had to be considered was the proportionality of the impact which the direction had on the Article 1 Protocol 1 rights of property owners. In order properly to assess that the Cabinet had to know, at least in broad terms, the effectiveness of the direction in achieving its objectives. That was needed so that the members of the Cabinet could form an assessment of whether the improvement which would be achieved by making the direction justified the adverse effects (and also to know the extent of those adverse effects).

42. It is against that background that I turn to consider whether the Officers' Report and the accompanying documents were materially misleading such as to cause the Cabinet to proceed on a false basis and to fail to have regard to a material consideration. Putting the issue more shortly: did those documents adequately explain the nature and effect of the making of the article 4 direction?

43. Several factors operate in favour of the Claimant and the contention that the Officers' Report and accompanying documents were materially misleading. The first is the tenor of the material read as a whole which gives a strong indication that all changes would be controlled. This is supported by the contrast to be drawn between the clear explanation in the Explanatory Memorandum at [4.4] to the effect that permission would only be needed for material changes of use and the absence of such an explanation in the documents provided to the Cabinet. In addition, the only reference to a material change of use was in the treatment of theme 34 in the analysis of the outcome of the engagement exercise. On behalf of the Defendant reference is made to the explanation in theme 34 as demonstrating that the Defendant's officers were aware of the correct position and the court should, the Defendant says, read the documents in light of that understanding. In addition Mr Hunter pointed out that in the GPDO itself reference is made to changes of use without use of the word material even though those drafting that document were clearly aware that only material changes of use amounted to development. He contended that references in the papers presented to the Cabinet to development and to changes of use were to be seen as references to those as technical concepts and that they would have been understood as such (and so as carrying with them the implication that a change of use which was not material would not be development and would not be controlled).

44. It is necessary to stand back and to look at the documents in the round and realistically. When that is done it is apparent that the Officers' Report and the accompanying documents materially misled the members of the Cabinet. The making of the article 4 direction gave the Defendant control over changes between classes C3 and C5 and C6 which were material changes of use but not between such changes which were not material. That was a significant difference in circumstances where, as explained in *Moore,* not every change from a private residence to commercial letting would be a material change of use. The members of the Cabinet needed to be made aware that the article 4 direction did not bring non-material changes of use within the scope of planning control. The papers did not do that but instead, when read

realistically, gave the incorrect impression that all changes would be controlled. The contrast between the clear terms of the Explanatory Memorandum and the terms of the Officers' Report is striking. There were repeated references in the documents of which the only realistic reading was that all changes were being controlled. It is also of note that the letter that was sent to residents said in terms that any change of use would require planning permission. The false impression given by the documentation as a whole was not remedied by the sole reference to a material change of use in the treatment of theme 34 of the engagement exercise. The position was also not remedied by the fact that section 3 of the research paper presented to the Cabinet in December 2020 had been a correct statement of some of the applicable principles. The Claimant has shown that only two of the eight Cabinet members engaged in the Decision had been at the meeting when the research paper was considered which was in any event 3½ years earlier. I note that one further member present in July 2024, Dilwyn Morgan, had sent his apologies in respect of the earlier meeting and so can be taken to have been provided with the research paper. In any event section 10 of the research paper proceeded on the basis that if an amendment of the UCO were to be made planning permission would be needed for all use of dwellings for holiday accommodation and to that extent it was misleading.

45. The position, therefore, is that the members of the Cabinet were materially misled on a matter bearing on the Decision which was, therefore, reached on a false basis. The Decision is to be quashed unless relief is precluded by section 31(2A) of the Senior Courts Act 1981.

The Application of Section 31(2A) of the Senior Courts Act 1981.

46. The Defendant contends that even if the members of the Cabinet were materially misled relief is precluded by the requirement in section 31(2A) that relief is to be refused if it appears that the outcome for the Claimant would not have been substantially different if the conduct complained of had not occurred. Mr Hunter submitted that even though the article 4 direction did not give the Defendant control over all changes of use between classes C3 and C5 and C6 it gave the Defendant greater control over such changes than it would otherwise have had. It meant that those changes which were material could not be effected without planning permission. Mr Hunter submitted that the court could be satisfied that the Defendant would have regarded this enhanced degree of control as a benefit justifying making the article 4 direction and would still have proceeded to make it.

47. Lewis LJ explained the approach to be taken when considering the application of section 31(2A) in *R (Bradbury) v Brecon Beacons NPA* [2025] EWCA Civ 489 at [71] – [75]. The following aspects of that guidance are of particular relevance here.

48. At [71] Lewis LJ said:

> "In relation to section 31(2A), the court is concerned with evaluating the significance of the error on the decision-making process. It is considering the decision that the public body has reached, and assessing the impact of the error on that decision in order to ascertain if it is highly likely that the outcome (the decision) would not have been substantially different even if the decision-maker had not made that error. It is not for the court to try and predict what the public authority might have done if it had not made the error. If the court cannot tell how the decision-maker would have approached matters, or

> what decision it would have reached, if it had not made the error in question, the requirements of section 31(2A) are unlikely to be satisfied."

49. At [74] he explained that the requirement that it is highly likely that there would have been no substantial difference is "a high test to surmount" adding:

> "The section emphatically does not require the court to embark on an exercise where the error is left out of account and the court tries to predict what the public body would have done if the error had not been made. Approaching section 31(2A) in that way would run the risk of the court forming a view on the merits and deciding if it thinks the public body would reach that view if it had not made the error. Rather, the focus should be on the impact of the error on the decision-making process that the decision-maker undertook to ascertain whether it is highly likely that the decision that the public body took would not have been substantially different if the error had not occurred."

50. There is force in the argument advanced by Mr Hunter that even if the Cabinet had known that the effect of the direction was only to bring material changes of use under planning control that would still have been regarded as a real benefit. It could have been seen as going some way to addressing the problem with which the Cabinet was concerned namely the impact on the housing stock of a high number of second homes and holiday lettings. I also note that Pepperall J said that he "just persuaded" that he could not be satisfied for the purposes of section 31(2A) at the permission stage.

51. However, I also note that Pepperall J characterized the error as being one going to the "very heart of the efficacy of the policy" and I agree with that assessment.

52. It would to some extent be inconsistent to hold that relief was precluded by section 31(2A) in circumstances where I have held that the Cabinet was misled in a material matter. That is because, as explained above, a mater is only material if the decision might have been different but for the flawed advice. The tests for deciding that a report was materially misleading and for the operation of section 31(2A) are different. Nonetheless, a degree of mental gymnastics would be required for the court to be satisfied on the balance of probabilities that the error was material such that but for the error the decision might have been different but then to be satisfied that it is highly likely that the outcome would not have been substantially different if the conduct had not occurred.

53. However, even without that logical difficulty the requirements of section 31(2A) are not made out here and I cannot be satisfied that it is highly likely that the outcome for the Claimant would not have been substantially different. The Cabinet had to consider the proportionality of making the article 4 direction and to determine whether the benefit to be achieved warranted the interference with the Article 1 Protocol 1 rights of property owners in Gwynedd. The effectiveness of the direction in achieving its objectives was, at least potentially, a very significant factor in that balancing exercise. It will be a matter for the judgement of the Cabinet but it is at least possible that the view could be taken that where the direction could not bring all changes of use under control the resulting benefit would not justify the effect on property owners. It may be that the Cabinet would wish to make an assessment of the extent to which controlling only material changes of use will alter the position.

54. Relief is, therefore, not precluded by section 31(2A).

Conclusion.

55. The claim, accordingly, succeeds. I will hear submissions as to the form which relief should take following the handing down of this judgment.