



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 10

P602/25

OPINION OF LORD MENZIES

in the Petition of

RICHARD CROSS

Petitioner

against

THE HIGHLAND COUNCIL

Respondents

for

Judicial Review of a decision of the Highland Council dated 19 March 2025 to grant planning permission (reference 23/05466/FUL) for the erection of 66 dwelling houses on land 190 metres east of House of Rosskeen, Invergordon

Petitioner: J Findlay KC et Dunlop; Shepherd and Wedderburn LLP

Respondents: Armstrong KC; DWF LLP

17 February 2026

Introduction

[1] The petitioner Richard Cross lives in a property which he owns at Castle Mews, Invergordon. His property is adjacent to a site which is the subject of an application submitted to the respondents, the Highland Council, as planning authority for Invergordon, for planning permission for the erection of 66 dwelling houses on land 190 metres east of

House of Rosskeen, Invergordon. This application was submitted to the respondents on about 16 November 2023.

[2] The petitioner submitted objections to the respondents, arguing that planning permission for the proposed development should be refused. Other parties, including Woodland Trust also submitted objections to the proposed development. One of the grounds of opposition to the proposed development made by the petitioner and by other objectors was its potential adverse impact on trees and loss of ancient woodland. It was submitted that the proposed development would be contrary to Policy 6 of NPF4.

[3] Letters by or on behalf of the petitioner objecting to the proposed development were submitted to the respondents dated 16 January 2024, 5 December 2024 and 20 January 2025. Letters of objection on behalf of Woodland Trust were submitted to the respondents dated 20 December 2023 and 28 February 2025. A letter from an organisation named Save our Green Space (of which the petitioner was chair) also objecting to the proposed development was submitted on 10 March 2025. These letters raised the issue of loss of trees, loss and deterioration of ancient woodland and veteran trees, and disconformity with Policy 6 of NPF4.

[4] The respondents' North Planning Applications Committee ("the Committee") met on 16 April 2024 to consider the application. Before this meeting the respondents' planning officers prepared a report ("the April 2024 report") to inform the members of the Committee of the relevant planning matters to be taken into account when determining the application. (I return to this, and the other reports, in more detail below). At this meeting the Committee agreed to grant the application subject to the conclusion of a section 75 agreement. Accordingly no decision notice was issued. Pending resolution of the section 75 agreement the respondents adopted the Inner Moray Firth Local Development Plan II ("the 2024 LDP").

[5] The respondents' planning officers prepared a supplementary report to the Committee dated 22 January 2025 ("the January 2025 report"). They prepared a further report to the Committee dated 12 March 2025 ("the March 2025 report"). On 19 March 2025 the respondents issued their decision notice granting conditional planning permission for the proposed development. It is against this notice that the current petition for Judicial Review is directed.

[6] The petitioner seeks several remedies, as set out at paragraph 4 of the petition. In particular, he seeks (a) declarator that the respondents' decision of 19 March 2025 to grant consent is unreasonable *et separatim* irrational *et separatim* was not reached in accordance with the statutory requirements of the 1997 Act and is accordingly *ultra vires*; (b) declarator that the respondents' decision of 19 March 2025 to grant consent failed to take into account relevant material considerations and is accordingly *ultra vires*; (c) declarator that the respondents' decision of 19 March 2025 was reached in the absence of sufficient information before the Committee to reach a properly informed decision and accordingly is *ultra vires*; and (d) reduction of the decision of 19 March 2025 to grant planning permission for the proposed development.

[7] The respondents oppose the petition. They maintain *inter alia* that their decision was lawfully reached in the proper exercise of their planning function; that they did not act *ultra vires* or outwith their statutory powers; and that the court should exercise its discretion not to grant the orders sought.

The relevant law

[8] Both parties were agreed as to the legal principles to be applied in determining this petition, so I do not set out these in detail at this stage. They are set out at paragraphs 7 to 11

of the Note of Argument for the petitioner, and at paragraphs 15.1 – 15.7 of the Note of Argument for the respondents. Reference is made in the Notes of Argument to the following authorities:- *Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345 at 348; *Crest Nicholson Operations Limited v Secretary of State for Housing Communities and Local Government* [2025] EWHC 2194 (Admin) at paragraphs [26] – [32]; *St Modwen Developments Limited v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643; *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA 1314 at paragraph 42; *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 WLR 759 at 780 and 784; *Moray Council v Scottish Ministers* 2006 SC 691 at paragraphs 28 – 32; *Simson v Aberdeenshire Council* 2007 SC 366 at paragraph 23; *R (on the application of Whitley Parish Council) v North Yorkshire County Council* [2023] JPL 1081 at paragraphs 35 – 37; *R (on the application of Buxton) v Cambridge County Council* [2022] JPL 487 at paragraphs 42 and 43; and *Oxton Farms & Another v Selby District Council* 2017 PTSR 1003 at 1111.

The relevant planning policy

[9] National Planning Framework 4 (published February 2023) was in force at the relevant time. Policy 6 of NPF4 provides as follows:

“Policy 6

- a) Development proposals that enhance, expand and improve woodland and tree cover will be supported.
- b) Development proposals will not be supported where they will result in:
 - i. Any loss of ancient woodlands, ancient and veteran trees, or adverse impact on their ecological condition;
 - ii. Adverse impacts on native woodlands, hedgerows and individual trees of high biodiversity value, or identified for protection in the Forestry and Woodland Strategy;

- iii. Fragmenting or severing woodland habitats, unless appropriate mitigation measures are identified and implemented in line with the mitigation hierarchy;
 - iv. Conflict with Restocking Direction, Remedial Notice or Registered Notice to Comply issued by Scottish Forestry.
- c) Development proposals involving woodland removal will only be supported where they will achieve significant and clearly defined additional public benefits in accordance with relevant Scottish Government policy on woodland removal. Where Woodland is removed, compensatory planting will most likely be expected to be delivered.
- d) Development proposals on sites which include an area of existing woodland or land identified in the Forestry and Woodland Strategy as being suitable for woodland creation will only be supported where the enhancement and improvement of woodlands and the planting of new trees on the site (in accordance with the Forestry and Woodland Strategy) are integrated into the design.”

Annex F to NPF4 provides the following definition:

“Ancient woodland: Land that has maintained continuous woodland habitat since at least 1750.”

The relationship of the site to ancient woodland

[10] Figure 1 below shows that the proposed development site is largely surrounded by ancient woodland. The site is the irregular roughly triangular shape predominantly coloured pale grey in figure 1.

Figure 1

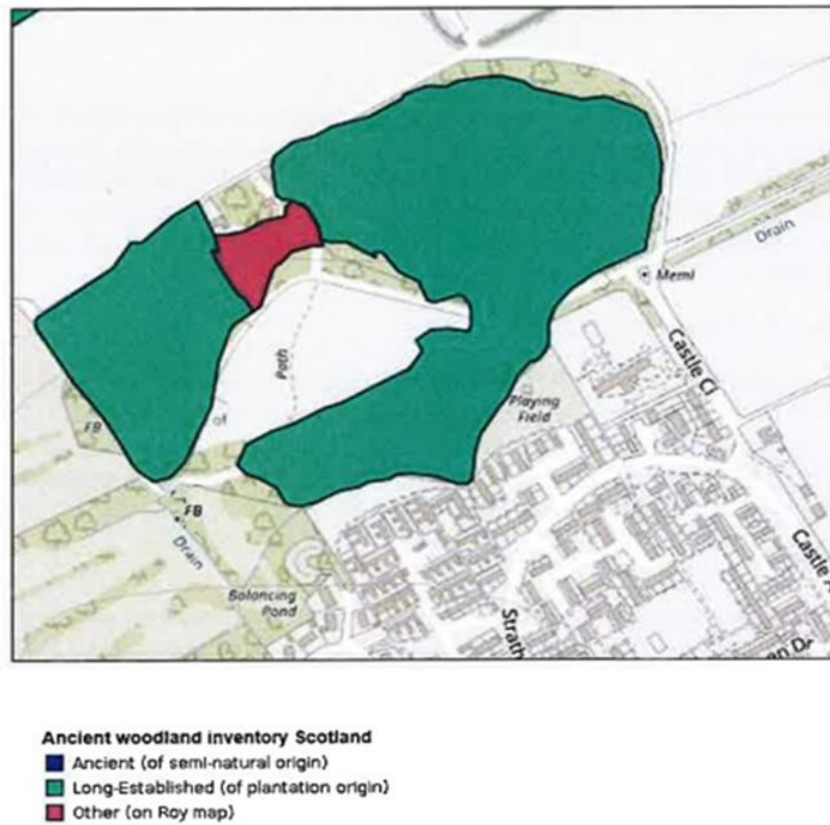


Figure 2 below is a drawing showing the layout of the proposed development. The red crosses indicate the position of individual trees which will require to be removed.

Figure 2



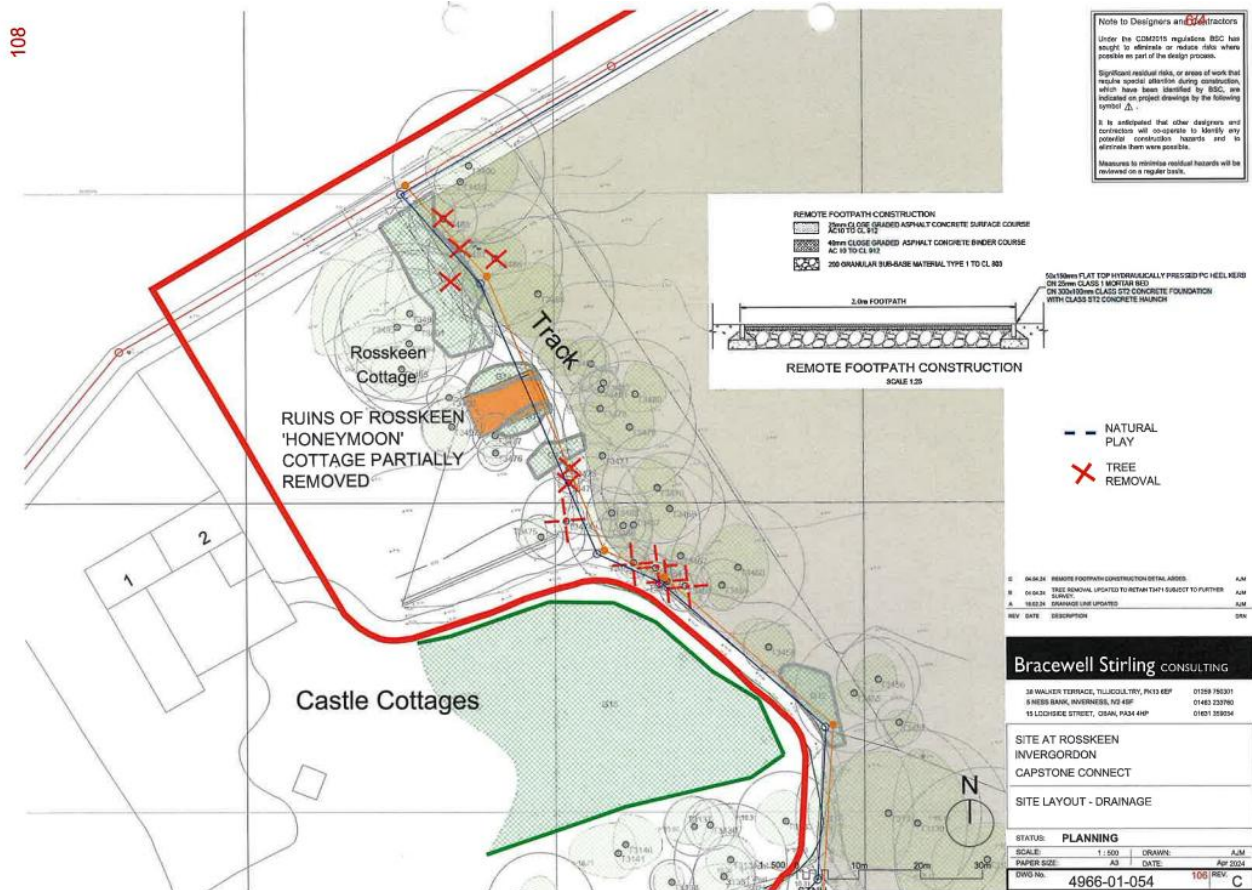
It should be noted that some of the trees that would require to be removed would have been recommended for removal in any event. At its meeting on 12 March 2025 the Committee was advised by the respondents' acting team leader in the North Planning Team that:

"it is proposed that 39 individual trees and six groups of trees require removal to implement the proposed layout. Ten individual trees and four groups have been recommended for removal regardless of any planning determination, for either safety reasons or general tree management."

Moreover, neither of the parties was able to indicate to the court with any certainty the precise boundary of any ancient woodland. As senior counsel for the petitioner put it when referring to figure 2 above, the red crosses indicate the trees to be removed, but only some of these were within the ancient woodland area; some were outside it, and some it was not

possible to be sure about. The trees indicated to be removed on figure 3 were the trees which formed the basis of the concern of the petitioner and Woodland Trust.

Figure 3



Submissions for the petitioner

[11] Senior counsel for the petitioner adopted his Note of Argument in its entirety. He submitted that there were four separate limbs to NPF4 Policy 6, each of which dealt with a different but related matter. Policy 6(a) was simply a general supportive policy in favour of development that enhances, expands and improves woodland and tree cover.

Paragraph 6(b) was at the heart of the petitioner's case.

[12] Paragraph 6(b)(i) makes it clear beyond doubt that it is the policy of the Scottish Government that any loss of ancient woodland will not be supported. Each category within paragraph 6(b) must be considered separately. Sub-paragraphs (ii), (iii) and (iv) are not absolute, but sub-paragraph (i) applies to any loss of ancient woodland and ancient and veteran trees. Paragraphs 6(c) and 6(d) are not absolute and relate to different situations. Paragraph 6(c) relates to removal of woodland (not ancient woodland) which may be acceptable and supportable if it achieves significant and clearly defined public benefits, and probably with compensatory planting. Policy 6(d) relates to development proposals which include an area of existing woodland, which may be supported where the enhancement and improvement of the woodlands and planting of new trees are integrated with the design. The respondents' planning officer may have had these (less strict) provisions in mind in the reports, but they contrast sharply with the strict policy regarding ancient woodland in paragraph 6(b)(i). This is Scottish Government policy, and it is not open to the respondents to water it down. In any event, if there is to be any loss of ancient woodland as a result of a development proposal, this must be recognised by the decision-maker and placed in the balance when considering the merits and demerits of the proposal. This was not done in this case.

[13] That the respondents' planning officers failed to consider and apply Policy 6(b)(i) to this proposal is apparent from the background of the objections and the officers' reports to the Committee. In the first letter of objection from the Woodland Trust, dated 20 December 2023, the Trust highlighted Policy 6(b)(i) and expressed concerns about the "potential root encroachment of trees within the ancient woodland during construction works". The Trust's opposition to the application was due to potential deterioration of the ecological condition of an area of ancient woodland and potential deterioration of veteran trees.

Thereafter the Arboricultural Impact Assessment and Method Statement prepared for the developers, as revised 18 March 2024, noted that the drainage works in the north of the site would require the removal of additional trees, and that there would be more tree impacts than first thought in the area close to Honeymoon Cottage which was not previously assessed.

[14] The second letter of objection from the Woodland Trust, dated 28 February 2025, was couched in much stronger terms than the first. Rather than merely expressing concerns about potential deterioration it noted that the development proposal would involve the felling of specified trees within the ancient woodland contrary to NPF4, as well as root encroachment during construction works. The letter of objection from Shepherd and Wedderburn on behalf of the petitioner dated 20 January 2024 also made specific reference to NPF4 Policy 6(b), and that removal of trees from ancient woodland would contravene this.

[15] It was submitted that none of the three reports to the Committee recognised the increase in the force of the objections about ancient woodland, nor the absolute nature of Policy 6(b)(i). The April 2024 report did make passing reference to the site being within a clearing of ancient woodland (paragraphs 2.1 and 2.3) and identified adverse effects on natural heritage, including the ancient woodland and trees, as a material consideration (paragraph 4.2). The ancient woodland was noted as part of the Invergordon Community Council's objection (para 5.1), but at para 5.9 the respondents' Forestry Officer supported the proposed development and made no reference to ancient woodland or Policy 6. There was a passing reference at paragraph 6 to Policy 6 of NPF4 being relevant to the assessment of the application, and the impact on ancient woodland, forestry and trees was identified as one of the key considerations in the case at para 6.3, and trees and ancient woodland were touched

on at paras 8.23, 8.28 and 8.29, but it was not apparent there that trees in the ancient woodland would be lost as a result of the development.

[16] The April 2024 report went on to consider the impact of the proposed development on ancient woodland and trees in greater detail at paras 8.39 – 8.47, and Policy 6 of NPF4 was set out in full at para 8.42. However, there was nothing to suggest that the proposal would result in the loss of any ancient woodland, and although there was reference (at para 8.41) to drainage works in the vicinity of Honeymoon Cottage, there was no consideration of the loss of trees in ancient woodland, nor whether this would conflict with Policy 6(b), nor any attempt to justify this. None of the conditions proposed in para 11 of the April 2024 report was directed at the protection of ancient woodland.

[17] After the adoption of the 2024 LDP in 27 June 2024 it was necessary for the respondents to consider the application again, the development site having previously been allocated for housing land but removed from this category in the 2024 LDP. The respondents' Area Planning Manager – North therefore prepared the January 2025 report. This predated the second letter of objection from Woodland Trust (20 February 2025). The report stated (at para 2.1) that the proposal no longer complied with the 2024 LDP or with NPF4, but the departure from both was outweighed by other material considerations. However, the justification for this appraisal at para 2.2 suggested that the author of the report was considering Policy 6(c), not Policy 6(b), as compensatory planting to offset and mitigate woodland resource loss is a relevant consideration for Policy 6(c) but not for Policy 6(b)(i).

[18] The March 2025 report was prepared after the respondents had received the much more critical second letter from Woodland Trust dated 28 February 2025. The Policy Appraisal section of this report acknowledged (at para 3.3) that the proposal was a

departure from the 2024 LDP and from NPF4 Policy 6 (amongst other policies), but stated (at para 3.4) that the respondents' Development Plans Team commented that "the application should ... justify any woodland resource loss and secure mitigation and compensatory planting to offset any loss (Policy 6)". This was a reference to Policy 6(c); it was not relevant to Policy 6(b)(i). Nothing in the March 2025 report seeks to justify the loss of ancient woodland. Although it was stated in the conclusion (at para 7.3) and the Recommendation (at para 9) that all relevant matters had been taken into account, there is no mention in the report of the loss of trees in ancient woodland, nor any attempt to justify this.

[19] Turning to the presentation to the Committee and to the transcript of its meeting on 12 March 2025, senior counsel accepted that the Committee's attention had been drawn to the fact that trees would be removed, but there was no specification provided as to where the boundary of ancient woodland lay, nor whether any trees to be removed lay within ancient woodland. It was not pointed out to the Committee that the Woodland Trust's position had changed from concern at potential loss or damage to trees to outright objection because of felling of ancient woodland. The Committee was told that tree loss would be compliant with Policy 6, but this could not be correct, because some trees within the ancient woodland would be felled as a result of the proposed development.

[20] Senior counsel returned to the three Grounds of Review in his Note of Argument:

1. The Committee were not properly informed about loss of ancient woodland and veteran trees.

The Committee were told that the site was surrounded by ancient woodland, and that there would be loss of some trees, but they were not made aware that there would be a loss of ancient woodland. This was an error. There ought to have been a proper assessment of the proposal against Policy 6(b). The

Committee was not appraised of the loss of ancient woodland which would result from drainage works in the north east corner of the site. On the material presented to them, and particularly the comments of the Forestry Officer and the planning team, the Committee might have formed the view that any tree loss could be compensated or mitigated by fresh planting. This was not the case – Policy 6(b) does not provide for this.

2. The reports and the presentation to the Committee failed to assess the implications of loss of ancient woodland in terms of Policy 6(b)(i).

If there is to be any loss of ancient woodland, there can be no compliance with Policy 6(b), so consideration of compliance with Policy 6(c) is irrelevant.

3. The Committee was misled as to the nature of the Woodland Trust's opposition.

The March 2025 report did not deal adequately with the Woodland Trust's second letter dated 28 February 2025. This letter did not merely express concern about the potential loss of trees; it contained an outright objection on the basis of the felling of several identified and specified trees within the ancient woodland. The report's failure to advise the Committee that the position of the Woodland Trust had changed was misleading. The planning officer may have been aware of the loss of trees in the north east corner of the site as a result of drainage works, but this was not drawn to the attention of the Committee. The Committee accordingly did not include this in their assessment, and so left out of account a material consideration.

[21] For each and all of these reasons senior counsel submitted that the Committee's decision could not be allowed to stand, and he moved the court to grant the prayer of the petition.

Submissions for the respondents

[22] Senior counsel for the respondents adopted his Note of Argument. He advanced two broad propositions. First, the reports to the Committee identified the issues, policies and evidence required for the determination of the application, and set out the author's planning judgment and recommendations. The Committee had before it all the written evidence and materials, including the Tree Protection Plan (production 7/3), the Tree Constraints Survey (production 7/6) and the Tree/Woodland Management Plan (production 7/5); they also had both letters from the Woodland Trust and the letters from Shepherd and Wedderburn on behalf of the petitioner (notably that dated 20 January 2024). There was a clear basis before the Committee to justify the conclusion that there would be no loss of ancient woodland or veteran trees, and that the proposed development would result in positive public benefits.

[23] Senior counsel drew attention to the definition of ancient woodland in the glossary at Annex F to NPF4, namely land that has maintained continuous woodland habitat since at least 1750. Although there is an averment in the petition that the proposed development would result in loss of ancient woodland or veteran trees, this was not pressed by senior counsel for the petitioner in his submissions. There would be no loss of ancient woodland – there would be no change in the area of land. There would be a loss of some trees, but as was made clear to the Committee during the presentation at its March 2025 meeting some of these trees required to be removed regardless of any planning determination, for safety reasons or general tree management (*per* the affidavit of

Claire Farmer-McEwan particularly at paragraphs 5 and 6). The land would remain ancient woodland. This was a matter of planning judgment, and the planning officer concluded that there would be no loss of ancient woodland. There would be a loss of only two category A trees which is why the respondents' Forestry Officer made no objection. As a matter of planning judgment it was concluded that the proposed development did not contravene NPF4 Policy 6.

[24] Senior counsel made four points in relation to this proposition:

- (i) The April 2024 report identified (at para 4.2(g)) that adverse effects on natural heritage, including the ancient woodland and trees, was a material consideration. At para 8.3(e) the impact on ancient woodland, forestry and trees was listed as a key consideration in this case. There had been no suggestion by the petitioner that this was incorrectly summarised, or that anything was missing.
- (ii) The April 2024 report included in its list of relevant Development Plan Policies at paragraph 6 NPF4 Policy 6 – forestry, woodland and trees. Moreover, at para 4.3 the Committee were told that all letters of representation were available for inspection via the counsel's eplanning portal. This application raised 18 important issues, and 33 Development Plan Policies were relevant to it; these had to be presented to the Committee in a manageable and intelligible form.
- (iii) The April 2024 report set out the background to the application and the evidence supporting it at paras 1.4 and 1.5; where the letters of objection could be found (para 4) and the position of the Forestry Officer (para 5.9). The Tree Schedule referred to by the Forestry Officer contained a detailed analysis of every single tree, including its category, height and age. The Tree Constraints Survey (production 7/6) gave further analysis of the quality and condition of the trees, and the Arboricultural

Impact Assessment and Method Statement (production 7/4) which predated the second letter from the Woodland Trust gave details of tree removals and reasoning, and details of root protection, drainage works, mitigation and new planting. The Committee had before it a full analysis of the loss of trees, and the conclusion that there would be a positive gain to the woodlands as a result of the proposal. The Committee was entitled to rely on this conclusion.

(iv) The reports to the Committee identified that (a) the developable area of the site was almost completely clear of trees; (b) that although the proposal would result in the loss of some trees, none of these were ancient or veteran trees; (c) the proposal would result in the restoration and enhancement of the ancient woodland; (d) the loss of some trees does not equate to the loss of ancient woodland, and does not result in the reduction of ancient woodland; and (e) that the proposal accorded with NPF4 Policy 6. The importance of the ancient woodland was emphasised in the April 2024 report (para 8.23), and it was noted that a small number of trees would require to be removed (paras 8.23, 8.28 and 8.29). The impact on ancient woodland, forestry and trees was discussed in detail (including the setting out of Policy 6(a) and (b) in full) at paras 8.39-8.52.

[25] On 12 March 2025 the Committee was given a detailed presentation by Claire Farmer-McKewan which included reference to the loss of precise numbers of trees, the categories of these trees, and to the fact that the Forestry Officer was satisfied with the proposed layout as it retained and protected the most valuable trees across the site and was therefore in line with Policy 6. Reference was made to her affidavit.

[26] It was to be noted from the minutes of the Committee's meeting on 12 March 2025 that one of the members of the Committee, Cllr Collier, moved to refuse planning

permission for several reasons, including that the proposal would result in the loss of ancient woodland contrary to Policy 6(b). Her opposition reflected the grounds of objection of the petitioner and the Woodland Trust. She advanced arguments as to why the application should be refused, but she failed to find a seconder. The point was fully aired before the Committee.

[27] Senior counsel's second proposition was that the Woodland Trust was not a statutory consultee, and there was no requirement for any of the reports to make specific reference to the Trust's objections. The issue of ancient woodland and the effect of the proposed development on ancient woodland trees was clearly focussed in the reports, and there was nothing misleading in any of the reports. The objection by the Woodland Trust was not itself a material consideration. Loss of trees and NPF4 Policy 6 were correctly identified as material considerations, and were considered in the reports. The Tree Protection Plan was attached to the April 2024 report, and the other surveys and expert reports were all properly before the Committee and were discussed in the presentation at the Committee meeting on 12 March 2025. The planning officer in the present case had not given any misleading information to the Committee and had given full and detailed advice. What should be included in a report was a matter for planning judgment; reference was made in particular to *Mansell v Tonbridge and Malling Borough Council* at paras 42/43 and 62/63, and *R (on the application of Buxton) v Cambridge County Council* at para 43.

[28] Senior counsel moved the court to sustain the 2nd to 5th pleas in law for the respondents, to repel the pleas in law for the petitioner, and to refuse the prayer of the petition.

Reply for the petitioner

[29] Senior counsel maintained that none of the material before the Committee identified which trees would be lost in the ancient woodland. The Planning Officer did not identify what loss of ancient woodland would result from the proposed development. This was a material failure.

[30] There was a significant difference between management/enhancement of ancient woodland, and removal of trees for drainage works. The tree removals about which the Woodland Trust expressed particular concern were not being removed for safety or maintenance purposes, but solely because of the development. There was no mention of this in the reports.

[31] Senior counsel for the respondents argued that loss of trees in the ancient woodland does not mean loss of ancient woodland, and there was no need to redraw the boundaries of the ancient woodland. However, that does not follow – these trees will be felled to create a passageway through the ancient woodland, and this area must be considered a loss of ancient woodland.

Discussion and decision

[32] The planning application which was the subject of the decision challenged in this petition was for a major development: the erection of 66 dwelling houses with associated road, drainage and services with various landscaped recreation areas and retained woodland. The April 2024 report stated that a total of 135 representations had been received in the public participation exercise by the date of the report; it identified 20 material considerations which had to be addressed (para 4.2) and 33 Development Plan Policies which were relevant in the assessment of the application (para 6).

[33] There was a wide range of matters which had to be summarised by the planning officer and placed before the Committee in an intelligible and digestible form.

[34] What is to be included in a report by a planning officer to a planning Committee is a matter of planning judgment. It is not always an easy task. The courts will give some latitude to the planning officer. The observations of the Court of Appeal in *R (Mansell) v Tonbridge and Malling Borough Council* are relevant in this regard. Lindblom LJ stated at para 42 *inter alia*:

“42 the principles on which the court will act when criticism is made of a planning officer’s report to committee are well settled. To summarise the law as it stands ...

(2) The principles are not complicated. Planning officers’ reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge: see the judgment of Baroness Hail of Richmond JSC in *R (Morge) v Hampshire County Council* [2011] PTSR 337 para 36 and the judgment of Sullivan J in *R v Mendip District Council Ex p Fabre* [2017] PTSR 1112, 1120. Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer’s recommendation, they did so on the basis of the advice that he or she gave: see the judgment of Lewison LJ in *R (Palmer) v Hertfordshire Council* [2017] 1 WLR 411, para 7. The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer’s report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee’s decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.

(3) Where the line is drawn between an officer’s advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R (Loader) v Rother District Council* [2017] JPL 25), or has plainly misdirected the members as to the meaning of a relevant policy: see for example *R (Watermead Parish Council) v Aylesbury Vale District Council* [2018] PTSR 43. There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law: see for example, *R (Williams) v Powys County Council* [2018]

1 WLR 439. But unless there is some distinct and material defect in the officer's advice, the court will not interfere."

[35] Sir Geoffrey Vos C agreed with Lindblom LJ, but added his own observations (at paras 62 and 63) as follows:

"In the course of the argument, one could have been forgiven for thinking that the contention that the presumption in favour of sustainable development in the National Planning Policy Framework had been misapplied in the planning officer's report turned on a minute legalistic dissection of that report. It cannot be over-emphasised that such an approach is wrong and inappropriate. As has so often been said, planning decisions are to be made by the members of the planning committee advised by planning officers. In making their decisions, they must exercise their own planning judgment and the courts must give them space to undertake that process.

63. Appeals should not, in future, be mounted on the basis of a legalistic analysis of the different formulations adopted in a planning officer's report. An appeal will only succeed, as Lindblom LJ has said, if there is some distinct and material defect in the report. Such reports are not, and should not be, written for lawyers, but for councillors who are well-versed in local affairs and local factors. Planning committees approach such reports utilising that local knowledge and much common sense. They should be allowed to make their judgments freely and fairly without undue interference by courts or judges who have picked apart the planning officer's advice on which they relied. "

[36] In the present case, the Committee was provided with very full information as to the proposed development and its likely consequences. The April 2024 report extended to some 44 pages, the January 2025 report extended to some 9 pages and the March 2025 report extended to some 13 pages. In addition, all the letters of objection were before the Committee (including that of the Woodland Trust dated 28 February 2025), and the Tree Protection Plan, Arboricultural Impact Assessment and Method Statement, the Tree/Woodland Management Plan, Revision C, and the Tree Constraints Survey were before the Committee. The impact on ancient woodland, forestry and trees was considered in some detail by the planning officer at paras 8.39 to 8.47 of the April 2024 report, and Policy 6(a) and (b) of NPF4 were quoted in full. In terms of quantity of material, consideration and planning advice to the Committee I do not consider that there is force in the petitioner's

submissions. The Committee approached the report and all the other material before them utilising their local knowledge and common sense.

[37] Senior counsel for the petitioner presented his submissions as persuasively as ever, but there were occasions on which he approached the minute legalistic dissection of the reports which was castigated by Sir Geoffrey Vos. Having properly drawn the distinction between Policy 6(b)(i) and Policies 6(c) and 6(d), he suggested that the planning officer may have had in mind the less strict provisions of the latter two paragraphs, rather than the strict lack of support of para 6(b)(i). I consider this to be unlikely, particularly as at para 8.42 the planning officer has chosen to set out Policy 6(a) and (b) in full and has not set out Policies 6(c) or (d) at all, nor made reference to them. The issue of whether the proposed development is contrary to Policy 6(b)(i) is one which involves planning judgment. The Forestry Officer did not object to the proposal, subject to appropriate conditions, and noted that the expert reports (listed at para 5.9) supported it. The planning officer observed (at para 8.23) that “the ancient woodland area to the north east is an important asset and will be safeguarded and retained both for its historic value and wildlife habitat value.”

[38] Having regard to the definition of ancient woodland in Annex F to NPF4 as “land that has maintained continuous woodland habitat since at least 1750”, I consider that senior counsel for the respondents was correct in his submission that the lack of support in Policy 6(b)(i) for development proposals which will result in “any loss of ancient woodlands” is directed at the loss of area of land, and is not directed at the loss of an individual tree or trees within that area, unless the trees which will be lost are ancient and veteran trees. There is no suggestion that any of the trees that will be lost as a result of this proposal fall into the category of ancient and veteran trees. The planning officer was entitled, in the exercise of her planning judgment, to conclude that the proposal was not

contrary to Policy 6(b)(i), and there is nothing perverse or unreasonable in her decision to do so. Having reached that conclusion, the planning officer properly went on to consider additional tree planting, enhancement of the setting of the new development, retention and protection of the ancient woodland, and additional public benefits.

[39] Senior counsel for the petitioner drew attention to the difference in tone between the Woodland Trust's first letter of objection dated 20 December 2023, which expressed concerns about potential root encroachment of trees during construction works, and the second letter dated 28 February 2025 objecting to the felling of specific trees in the ancient woodland.

Whilst it is correct that the second letter was couched in stronger terms than the first, the Woodland Trust was not a statutory consultee, and the planning officer was under no obligation to mention, far less provide a detailed textual comparison between, these two letters. The letters were included in the material before the Committee and the requirements for the felling of certain specified individual trees and groups of trees were examined in the expert reports, and were also covered by the planning officer in her presentation to the Committee at the meeting on 12 March 2025. The Committee must be taken to have been aware of this matter when it reached its decision.

[40] On the basis of all the material before it, the Committee must have been aware that one of the material considerations which they had to determine when making their decision was the impact of the proposed development on ancient woodland, forestry and trees. The Committee must have been aware of the terms of NPF4 Policy 6(b), and of the objections relating to this aspect of the proposal, and it had the benefit of three reports from its planning officer which considered these matters. One of the members of the Committee, Cllr Collier, was clearly aware of them, and raised them at the Committee meeting on

12 March 2025 when moving to refuse planning permission, but she failed to find a seconder for her motion.

[41] Turning to the three grounds of review relied on by the petitioner:

1. I am not persuaded that the Committee were not properly informed about loss of ancient woodland and veteran trees. As discussed above, there was a significant body of material placed before the Committee on this matter, and the planning officer gave a full assessment of this material. She reached a conclusion on this material using her planning judgment, and advised the Committee accordingly. In all the circumstances, there is nothing before me which would justify my reaching the view that her planning judgment was perverse or irrational, or that her advice to the Committee was significantly or seriously misleading. I am not satisfied that either the planning officer or the Committee failed to properly understand and apply relevant policy.
2. Although some trees and groups of trees will require to be felled as a result of the proposal, it is not clear to me that there will be any loss of ancient woodland – that is, land that has maintained continuous woodland habitat since at least 1750. There is no suggestion that any ancient and veteran trees will be lost. Policy 6 does not prohibit the felling of trees within ancient woodland if this will not result in loss of ancient woodland and it will achieve significant and clearly defined public benefits.
3. The Woodland Trust was not a statutory consultee. There was no obligation on the planning officer in the March 2025 report to give specific mention to the Woodland Trust's letters of objection, or to carry out a comparative analysis of them. The letters were before the Committee.

[42] It appears to me that the Committee reached the decision complained of in light of very full information about the impact of the proposal on ancient woodland, forestry and trees. The Committee appears to have accepted the advice of the planning officer, which was itself founded on an assessment and conclusion she was entitled to reach. The Committee had the benefit of their own local knowledge in reaching their decision. This is one of the cases in which the courts must give them space to undertake that process, and should refrain from undue interference.

[43] For these reasons I shall refuse the prayer of the petition.