Neutral Citation Number: [2026] EWHC 40 (Admin)

Case No: AC-2024-LON-004104

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/01/2026

Before :

MR JUSTICE CHAMBERLAIN

- -

Between :

THE KING
on the application of

ARCELORMITTAL KENT WIRE LIMITED	**Claimant**
- and -	
MEDWAY COUNCIL	**Defendant**
- and -	
PEEL L & P (PORTS NO.3) LIMITED	**Interested Party**

- -

Rupert Warren KC and Ben Fullbrook (instructed by **Dentons UK and Middle East LLP**) for the **Claimant**
Jenny Wigley KC (instructed by **Medway Council**) for the **Defendant**
David Elvin KC and Matthew Henderson (instructed by **Squire Patton Boggs (UK) LLP**) for the **Interested Party**

Hearing dates: 29-30 October 2025

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Approved Judgment

This judgment was handed down remotely at 10am on 13 January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Chamberlain:

Introduction

1. ArcelorMittal Kent Wire Ltd ("ArcelorMittal") is part of what it calls "the world's leading integrated steel and mining company". It is the largest operator at Chatham Docks, in Kent, where it occupies land leased from Peel L&P Ports No.3 Ltd ("Peel"), through which it supplies construction steels to the British market.

2. ArcelorMittal challenges the decision of Medway Council ("the Council") on 5 November 2024 to grant outline planning permission under the Town and Country Planning Act 1990 to Peel. The permission was for demolition and redevelopment of a site which includes the land currently used by ArcelorMittal. The permission covers the development of a new waterside business and enterprise campus including access. If the permission is upheld and the permitted redevelopment takes place, ArcelorMittal will have to leave the site.

3. The challenged decision was controversial locally. There were competing views about whether it would be good for the area. It passed the Committee by a narrow majority. It is important to emphasise that the Court's function in a claim such as this is not to say whether the decision was the right one, but simply to determine whether it was lawful.

4. There were originally seven grounds of challenge. Permission to apply for judicial review was granted by Mould J on 3 April 2025, limited to grounds 1-3. ArcelorMittal renewed its application for permission on ground 6(1) and an order was made that this application be heard on a rolled-up basis, together with the substantive hearing on grounds 1-3.

Key facts

5. Chatham Docks have a storied naval history. They are now home to a commercial port. The site to which the planning permission relates is part of the existing Chatham Docks estate. It currently has large scale industrial buildings and open storage. For the purposes of the Town and Country Planning (Use Classes) Order 1987 as amended, it comprises about 18,000 sq. m. of B2 (general industrial) and B8 (storage and distribution) use.

6. In the Medway Local Plan 2003 ("the Plan"), policy ED1 deals with existing employment areas. It provides as follows:

> "In the following Employment Areas, as defined on the proposals map, development will be permitted only for
>
> …
>
> (C) General Industry (Class B2) and storage and distribution (Class B8) at:
>
> (i) Chatham Port

…

Proposals for development on the above sites resulting in the loss of existing industrial, business or storage and distribution development to other uses will not be permitted."

7. The supporting text included these passages:

"4.5.1 Priority will generally be given to the retention of existing employment uses, provided that local amenity is not jeopardised. The council will encourage the improvement of such areas to enhance both the image and efficiency of companies and the environment. The latter is particularly important to the way potential business investors perceive Medway. Their accessibility by modes of transport other than car is also important and will be encouraged. Therefore, proposals for new development and extensions which are likely to generate further employment will be permitted in the areas listed below, subject to the particular characteristics of each site. A number of existing employment areas have been developed for a variety of office, industrial and warehousing uses. Accordingly, Business Uses (Class B1) and where appropriate, general industrial uses (Class B2) and storage and distribution uses (Class B8) will be permitted on the following sites for the reasons set out:

…

(ii) Chatham Port: The port deals with the handling and distribution of materials, together with some ship repairing. The continuing development of the port is covered in detail in policy ED9.

…

4.5.2 The local plan seeks to ensure that sufficient land is identified to enable a variety of employment opportunities to come forward. It also aims to limit the release of fresh land for development outside the urban area. The council will seek to retain appropriate existing sites for employment use. More specifically, given the scale and nature of provision made here and elsewhere in the plan, the council sees no case for retailing and leisure development to be allowed on land identified for business, industrial or warehousing uses."

8. Peel's application for outline planning permission was for "demolition and redevelopment of site to provide new waterside business and enterprise campus including access". The application form stated that the floor space would be used for "Flexible Use – Eg(ii), Eg(iii), B2, B8". It also said that:

(a) the site was currently in employment use falling within use classes B2 and B8;

(b) the proposed development did not include the gain, loss or change of use of any residential units;

(c) the proposed development would result in an increase in the existing non-residential floor space from 18,351 sq. m. to 31,000 sq. m., and the "flexible use" of that 31,000 sq. m. for specified uses (also described as "target uses");

(d) those target uses fell within use classes E(g)(ii) (research and development of products or processes), E(g)(iii) (any industrial process), B2 (general industry) and B8 (storage and distribution); and

(e) the proposed development would increase employment from 150 full-time existing employees at the site to 580 full-time employees.

9. The application form was accompanied by three relevant documents: a "Parameters Plan"; a "Design Principles Document", which set out the principles that will guide reserved matters applications; and a Planning Statement.

10. The Parameters Plan has a text box with an arrow identifying the "Development Zone". The text box includes the following text: "USE CLASS E(g)(ii)(iii) B2/B8 USE UP TO MAXIMUM OF: 31,000 m^2 (GIA)…"

11. The Design Principles Document discussed the design principles for buildings with employment uses (with some ancillary office space). None of the design principles related to buildings in primary office or residential use.

12. The Planning Statement explained the proposed development as follows:

> "1.5 The site forms part of the Chatham Docks Industrial Estate which was formed in the late 1980s after the naval base closed. Work is ongoing to identify relocation options for the remaining tenants to retain jobs, and the operational port will close once leases expire and the existing lock gates are decommissioned. For this reason, the application seeks consent for five years for the submission of reserved matters, to allow for this transition period before development can commence.
>
> 1.6 The former naval base occupied land around all three basins, and its regeneration has been ongoing since the late 1980s. A new community has become established on St Mary's Island and regeneration within Chatham Docks Industrial Estate has been progressing for the last 10 years, with £125m invested to date at Chatham Waters, with further development ongoing, creating new homes, commercial development and public open space.
>
> 1.7 This application is for the next phase of this wider development and will drive critical further investment in employment space to help meet future needs. The proposed development will be known as Basin 3 and seeks to create high value job opportunities as part of the wider mix of uses as the regeneration of the former naval base continues over the development plan period and beyond. […]
>
> 1.11 Once developed, the proposal will support the growing community around the site by providing employment opportunities whilst delivering modern facilities which respond to the current needs of businesses. Additionally, the proposed development is to ensure continued delivery of employment beyond the port operation coming to a close, and after the existing industrial uses have had time to relocate.
>
> 1.12 A flexible outline planning permission will help attract prospective tenants from a range of different sectors including high-tech, creative media, medical technology, marine and other growth sectors. The flexibility

will also enable Basin 3 to come forward with reserved matters submitted, if necessary, in stages."

13. At para. 4.4, the Planning Statement explained the proposed parameters as follows:

- Maximum floorspace up to 31,000m 2 sqm (GIA)
- Use Class B2 (up to 100% of floorspace)
- Use Class B8 (up to 100% of floorspace)
- Use Class E(g)(i) (up to 15% of ancillary floorspace)
- Use Class E(g)(ii) (up to 50% of floorspace)
- Use Class E(g)(iii) (up to 50% of floorspace)
- Maximum building height of 21.5 m
- Minimum employment floorspace level of 5.830m
- Minimum access road level of 5.527m
- Zones for development, linkages and landscaping.

14. ArcelorMittal opposed the proposals and submitted representations and expert reports, including a report prepared by the consultancy Volterra in March 2024 and entitled *Socio-economic importance of Chatham Docks* ("the Volterra Report"). The report emphasised the importance of the current port-related businesses operating at the Site and said that ArcelorMittal would be unlikely to be able to relocate to another site in the UK.

15. The proposals were originally due to be reported to the Council's Planning Committee ("the Committee") on 8 May 2024. An officer report ("OR1") was produced for this purpose. In the light of this report, ArcelorMittal's solicitors wrote to the Council on 4 May 2024, noting Chatham Docks' special characteristics, which it said were demonstrated by the clustering of wharf-side operations, and its development plan status.

16. The letter noted that Chatham Docks were the only non-tidal enclosed docks in Kent, which provide existing materials-handling and distribution occupiers with the ability to supply London and other UK regions with materials in a sustainable way. ArcelorMittal could load or unload vessels up to 143 metres long and 18 metres wide, with an 8 metre draft. The shipping company using the docks had a wider role serving other occupiers by more sustainable sea freight means. The current cluster of manufacturing, waste management and construction activity at Chatham Docks served London and the South-East well, enabling economic activity in other sectors.

17. In the light of this letter, the Council deferred its consideration of the proposals to a Special Planning Committee meeting on 30 May 2024. A further supplementary officer report was produced ("OR2"), with "adjustments and corrections" to OR1. The adjustments and corrections included amendments to the "Principle" and "Economic" sections of the "Planning Appraisal" part of OR1. The amendments included setting out part of the supporting text to Policy ED1 of the Local Plan. On the day of the meeting, a Supplementary Agenda Advice Sheet was also issued.

18. At the meeting, the Committee approved the proposals by eight votes to seven. During the meeting, officers provided additional advice and presentations to the Committee.

19. The outline planning permission was formally granted in a decision notice signed by the council's Head of Planning on 5 November 2024. It provided in material part as follows:

"**Proposal:** Outline application with some matters reserved (appearance, landscaping, layout and scale) for demolition and redevelopment of site to provide new waterside business and enterprise campus including access

Notification of Grant of Outline Planning Permission to Develop Land.

Take Notice that the Medway Council in pursuance of its powers under the above Act HAS GRANTED OUTLINE PERMISSION for the development of land as described above in accordance with your application for planning permission received complete on 24 January 2024.

SUBJECT TO THE CONDITIONS SPECIFIED HEREUNDER:

…

4. The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing numbers;
M23035-A-007 Rev B - Proposed Site Access
31852-PL-1003 Rev B - Development Parameters Plan

Reason: For the avoidance of doubt and in the interests of proper planning.

…

26. The development hereby permitted shall not exceed 31,000m² of Use Class B2, B8 and/or E(g).

Reason: To ensure that the overall floorspace remains within the parameters of the outline application in the interests of intensification of use and highway capacity.

27. Prior to the submission of a Reserved Matters, a scheme demonstrating the mix of B2, B8 and E(g) used to be adopted within the site shall be submitted to and approved in writing by the Local Planning Authority and development shall then be carried out in accordance with the agreed mix.

Reason: To ensure that development comes forward in the spirit of Policy ED1 of the Local Plan and that the amount of B2 and B8 uses remaining on site are controlled."

Ground 1

Submissions for ArcelorMittal

20. Rupert Warren KC for ArcelorMittal began by drawing attention to the principle (which the other parties accepted) that a local planning authority has no power to grant permission for development which is substantially different from that applied for: *Wheatcroft v Secretary of State for the Environment* [1982] 43 P&CR 233. The permission should be construed as it would be understood by a reasonable reader with some knowledge of planning law. Construed in that way, the permission includes a primary Class E(g)(i) (office) use, which was not applied for. The permission is therefore unlawful. Mr Warren made four points.

21. First, the description of the proposals in the decision notice—a "waterside business and enterprise campus"—was broad and does not specify any particular use class. E(g)(i) office use would be consistent with that description. Although the application form specified "Eg(ii), Eg(iii), B2, B8", a reasonable reader would note that this was not carried over into the description of the proposals in the decision notice.

22. Second, the decision notice must be read as a whole, including its conditions. Conditions 26 and 27 on their face permit all primary uses falling under Class E(g), including E(g)(i). This is consistent with the broad description of the proposal in the decision notice.

23. Third, the reasonable reader with some knowledge of planning law would know that a planning permission for the use of land will permit use of that land for any use provided it is not materially different from that described in the permission, unless that use is specifically restricted by a condition: *Barton Park Ltd v SSHCLG* [2022] EWCA Civ 833, [2022] PTSR 1699. Primary E(g)(i) office use is consistent with (and certainly not materially different from) the "waterside business and enterprise use" described in the decision notice. As noted above, conditions 26 and 27 do not prohibit such use; indeed they positively permit it.

24. Fourth, condition 4, which requires the development to be carried out "in accordance with" the parameter plan, would not be understood by the reasonable reader as prohibiting primary E(g)(i) use because:

    (a) the requirement that development to take place "in accordance" with the parameter plan does not require strict or precise accordance: *R (Swire) v Canterbury CC* [2022] EWHC 390 (Admin), [2022] JPL 1026, [43]-[44] & [55];

    (b) the parameter plan does not expressly prohibit primary E(g)(i) use;

    (c) the parameter plan must be read alongside the broad description of the proposals in the decision notice, as well as conditions 26 and 27, which permit such use.

25. If the permission is interpreted as limited to uses within E(g)(ii), E(g)(iii), B2 and B8, conditions 26 and 27 nonetheless grant permission for development which includes a primary E(g)(i) use. In that case, the conditions have the effect of expanding the scope of what is granted permission, which is unlawful: *R (Test Valley) v Fiske* [2024] EWCA Civ 1541, [2025] 1 WLR 3713, [95]-[96].

26. Either way, the error was material because office use is prohibited by Policy ED1 of the Local Plan. If the change was not a "substantial" one, it was procedurally unfair for the Council to make this change: see *R (Holborn Studios) v Hackney LBC* [2017] EWHC 2823, [2018] PTSR 997. This is especially so given the public opposition including from people concerned about the loss of employment.

Submissions for the Council

27. Jenny Wigley KC for the Council submitted that the permission, on its proper construction, does not grant planning permission for primary Class E(g)(i) office use.

28. As Mr Warren accepted, the words "in accordance with your application" in the operative part of the permission incorporates the application into the permission: see *R v Ashford BC ex p. Shepway DC* [1999] PLCR 12, at p.19F-G. The application does not include primary E(g)(i) office use, so neither does the permission. In any event,

condition 4 expressly requires the development to be carried out in accordance with the Parameters Plan and this specified uses classes E(g)(ii) and (iii) and B2/B8.

29. As to the broad wording used in the decision notice to describe the proposed development, this is identical to the description on the application form and is in any event consistent with an application for use classes E(g)(ii) and (iii) and B2/B8.

30. Conditions 26 and 27 control specific matters unrelated to the subclasses within E(g). In any event, the general reference to "E(g)" in conditions 26 and 27 cannot expand the scope of the grant in the operative part of the Permission: see *Fiske*, at [54(3)] and [70] to [71] and *Cadogan v Secretary of State for the Environment* (1993) 65 P & CR 410.

Submissions for Peel

31. David Elvin KC for Peel adopted Ms Wigley's submissions. It was clear that permission had not been granted for E(g)(i) office use. He added that condition 4 sets the parameters of the permitted uses of the site under the permission.

32. Conditions identify what cannot be done, rather than what can. It is not necessary to impose a restrictive condition if the planning permission does not authorise a specific use since permission would be required if there is a material change of use: see *Sullivan LJ in Winchester CC v Secretary of State* [2015] JPL 1184 at [22] and [26].

Discussion

33. The principles applicable to the interpretation of planning permissions were authoritatively stated by Keene J in *R v Ashford BC ex p. Shepway DC*, at 19-20. They include the following:

> "(1) The general rule is that in construing a planning permission which is clear, unambiguous and valid on its face, regard may only be had to the planning permission itself, including the conditions (if any) on it and the express reasons for those conditions: see *Slough Borough Council v. Secretary of State for the Environment* (1995) JPL 1128, and *Miller-Mead v. Minister of Housing and Local Government* [1963] 2 QB 196.
>
> (2) This rule excludes reference to the planning application as well as to other extrinsic evidence, unless the planning permission incorporates the application by reference. In that situation the application is treated as having become part of the permission. The reason for normally not having regard to the application is that the public should be able to rely on a document which is plain on its face without having to consider whether there is any discrepancy between the permission and the application: see *Slough Borough Council v. Secretary of State* (ante); *Wilson v. West Sussex County Council* [1963] 2 QB 764; and *Slough Estates Limited v. Slough Borough Council* [1971] AC 958.
>
> (3) For incorporation of the application in the permission to be achieved, more is required than a mere reference to the application on the face of the permission. While there is no magic formula, some words sufficient to inform a reasonable reader that the application forms part of the permission are needed, such as '...in accordance with the plans and application...' or '... on the terms of the application...' and in either case those words appearing in the operative part of the permission dealing with the development and the terms in which permission is granted. These words need to govern the

> description of the development permitted: see *Wilson* (ante); *Slough Borough Council v. Secretary of State for the Environment* (ante)."
>
> (4) If there is an ambiguity in the wording of the permission, it is permissible to look at extrinsic material, including the application, to resolve that ambiguity: see *Staffordshire Moorlands District Council v. Cartwright* (1992) JPL 138 at 139; *Slough Estates Limited v. Slough Borough Council* (ante); *Creighton Estates Limited v. London County Council*, The Times, March 20, 1958."

34. These principles have been applied in numerous subsequent cases, including recently by Steyn J in *R (Gallagher) v Secretary of State for Housing, Communities and Local Government* [2021] EWHC 3007 (Admin), [2023] P&CR 11, at [4]-[9], and Holgate J in *Swire* at [32].

35. Keene J's principle (1) in the *Shepway* case makes clear that conditions are part of the permission and the permission must be read as a whole. However, the operative part of the grant and the conditions perform different functions. This was succinctly explained by Hickinbottom J in *Cotswold Country Park LLP v Secretary of State for Communities and Local Government* [2014] EWHC 1138 (Admin), [2014] J.P.L. 981, [15]:

> "…the grant identifies what can be done—what is permitted—so far as use of land is concerned; whereas conditions identify what cannot be done—what is forbidden. Simply because something is expressly permitted in the grant does not mean that everything else is prohibited. Unless what is proposed is a material change of use—for which planning permission is required, because such a change is caught in the definition of development—generally, the only things which are effectively prohibited by a grant of planning permission are those things that are the subject of a condition, a breach of condition being an enforceable breach of planning control."

This statement was approved by Sullivan LJ (with whom McFarlane LJ and Blake J agreed) in the Court of Appeal in *Winchester City Council v Secretary of State* [2015] EWCA Civ 563, [2015] JPL 1184, [22].

36. It is also established that "a condition on a planning permission will not be valid if it alters the extent or indeed the nature of the development permitted": *Cadogan v Secretary of State for the Environment* (1993) 65 P&CR 410, 413 (Glidewell LJ, with whom Leggatt LJ and Sir Thomas Bingham MR agreed); *R (Fiske) v Test Valley Borough Council* [2025] EWCA Civ 1541, [2025] 1 WLR 3713, [70] (Holgate LJ, with whom William Davis and Dingemans LJJ agreed).

37. Finally, conditions are to be interpreted by applying "a fair and objective reading of the conditions imposed, by asking what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and the planning consent as a whole: *DB Symmetry Ltd v Swindon Borough Council* [2023] UKSC 33, [2023] PTSR 160, [66] (Lord Hodge, giving the judgment of the Court); *CG Fry & Son Ltd v Secretary of State for Housing, communities and Local Government* [2025] UKSC 35, [2025] PTSR 1823, [66] (Lord Sales giving the judgment of the Court).

38. Applying these principles, it is clear beyond argument that the decision notice does not permit primary use in class E(g)(i).

39. The starting point is the operative part of the decision notice, which "identifies what can be done", as Hickinbottom J put it. What can be done is "the development of land as described above in accordance with your application for planning permission received complete on 24 January 2024" (emphasis added). It was common ground that, applying Keene J's principle (3) in the *Shepway* case, the underlined phrase meant that the grant was limited to what was sought in the application. On Mr Warren's own case, the application was expressly limited to use classes E(g)(ii), E(g)(iii), B2 and B8. So, therefore, was the permission. It is strictly unnecessary to go further before concluding that ground 1 must be rejected.

40. I have nonetheless considered Mr Warren's submissions based on the wording of the conditions. Condition 4 requires the development to be carried out "in accordance with" the Parameter Plan. That identifies the Development Zone as containing use classes E(g)(ii), E(g)(iii), B2 and B8. So, on its face, condition 4 is consistent with the Council's and Peel's interpretation of the scope of the permission and inconsistent with ArcelorMittal's.

41. In my judgment, and contrary to Mr Warren's submission, nothing in *Swire* suggests anything different. That case stands for the propositions that a requirement that development be "in accordance with" a parameter plan is not the same as a requirement that it be "exactly" or "strictly" in accordance with the plan; and deciding whether development is in conformity with a parameter plan may involve matters of planning judgment and degree: see at [43]-[44]. That might possibly assist Mr Warren here if condition 4 were the only textual source of the limitation to use classes E(g)(ii), E(g)(iii), B2 and B8. In fact, it is the express terms of the application, which are expressly incorporated into the permission, that provide the main textual source of the limitation. Condition 4 is wholly consistent with these terms.

42. Condition 26 provides that "the development hereby permitted" must not exceed 31,000m² of use class B2, B8 and/or E(g). Even without recourse to authority, and looking simply at the language used, this condition does not purport to define (let alone expand) "the development hereby permitted". It assumes that the scope of the permitted development is defined elsewhere (i.e. in the operative part of the grant) and then imposes a further limitation on the development. The limitation makes perfect sense, as a matter of logic and language, if—as the Council and Peel submit and as the operative part of the grant makes clear—the development hereby permitted is limited to primary use classes E(g)(ii), E(g)(iii), B2 and B8. Once the legal principles set out at [35] and [36] are brought into play, Mr Warren's submission is unsustainable: condition 26 could not, as a matter of law, expand the operative part of the permission.

43. Condition 27 simply requires the submission and approval of "a scheme demonstrating the mix of B2, B8 and E(g) uses to be adopted within the site". Again, it does not on its face purport to expand the permitted uses beyond those specified in the operative part of the grant. Again, as a matter of law, it could not do so. If the scheme submitted contained primary E(g)(i) uses outside the scope of the grant, it would have to be rejected. Nothing in condition 27 suggests the contrary.

44. In my judgment, there was no discrepancy between the uses for which Peel applied and the uses for which it was granted permission. Ground 1 therefore fails.

Ground 2

Submissions for ArcelorMittal

45. Mr Warren for ArcelorMittal submitted that the Council's planning officers materially misled the Planning Committee about the ability of condition 27 to preserve and maintain the 18,000 sq. m. of existing B2/B8 uses at the Site in that:

(a) the written advice given in an amendment to OR1 was that condition 27 would "ensure that the mix provided reflects the floorspace of B2/B8 required under Policy ED1"; and

(b) when the issue was raised by members of the committee at the meeting, the Council's Chief Planning Officer said that condition 27 is "looking to maintain at least 18,000 square metres of floor space for B2 and B8" and has "the objective of ensuring that the amount of B2/B8 floor space is not reduced as a result of this development".

46. In fact, condition 27 simply requires that "Prior to the submission of a Reserved Matters, a scheme demonstrating the mix of B2, B8 and E(g) used to be adopted within the site shall be submitted to and approved in writing by the Local Planning Authority and development shall then be carried out in accordance with the agreed mix." In fact, the condition does not require that the scheme, in demonstrating the mix of uses, must provide no less than 18,000 m^2 of B2 and/or B8 uses. Indeed, it does not require the delivery of a scheme with any particular mix of uses. And it neither prescribes any parameters the Council might use to determine the acceptability of any proposed scheme, nor restricts any subsequent change of use within Class E(g) to (for example) E(g)(i) office use. It also does not restrict any subsequent material change of use under the Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO") (for example to residential use). Having omitted to rule out any of these things, the Council cannot now retrospectively do so: see *Kent County Council v Kingsway Investments (Kent) Ltd* [1971] AC 72, at 96.

Submissions for the Council

47. Ms Wigley for the Council cited *R (Mansell) v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, [2019] PTSR 1452 for the proposition that officers' reports should be read with reasonable benevolence. The same applies to oral advice given by officers: *R (Lisle-Mainwaring) v Kensington and Chelsea RLBC* [2024] EWHC 440 (Admin), [2024] JPL 1102.

48. Applying these principles, the Chief Planning Officer's remarks, read in context, meant that the Council would be able to consider whether the scheme proposed had a mix of uses which complied with Policy ED1 or not. If not, the Council would be able to decline to approve the scheme. This is precisely what condition 27 does.

Submissions for Peel

49. Mr Elvin for Peel submitted that ArcelorMittal had misread or misinterpreted the oral advice. The advice was not that the provision of at least 18,000 sq. m. of use class B2 or B8 was guaranteed. It was simply that the Council would be "looking to maintain" that quantity of floor space in the relevant use classes and could do so given the need for it to approve the scheme referred to in condition 27.

50. As to ArcelorMittal's other points, the omission of any "parameters" in the text of Condition 27 for the assessment of an application under that condition was not unlawful. Nor was the absence of any restriction on subsequent change of use within use class E(g). Any later development undertaken in reliance on the GPDO is not

authorised by the OPP and the Claimant has not sought to show that the Council's failure to impose a condition restricting later reliance on the GPDO was unlawful.

Discussion

51. In *Mansell*, Lindblom LJ (with whom Sir Geoffrey Vos C and Hickinbottom LJ agreed) summarised at [42] the principles applicable when considering criticisms of a planning officer's report:

> "(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 Hale 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 Herefordshire 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."

52. In *Lisle-Mainwaring*, at [27], Neil Cameron KC (sitting as a Deputy High Court Judge) referred to the *Mansell* principles and added this:

> "In my judgment the obligation to treat advice with reasonable benevolence applies with even greater force to advice given orally at a committee meeting. In addition, unless oral advice is said to change, alter or correct advice given in writing, it is to be considered as supplementing the advice given in writing, and must be considered in conjunction with that written advice."

53. In addition, officers' advice is given to a specialist planning committee whose members will over time acquire knowledge of the statutory regime: see *R v Selby District Council, ex p. Oxton Farms* [2017] PTSR 1103, 1110G (Pill LJ, with whom Judge and Butler-Sloss LJJ agreed).

54. Mr Warren's submissions on this ground were, in my judgment, contrary to these principles. They seemed to cast the Committee's members in the role of pre-reformation churchgoers with the planning officers as priests, so that the former were unable to understand the underlying texts except through the mediation of the latter. In fact, the Committee's members had before them the text of condition 27 and the reason for it. They could read these for themselves and must be assumed to have done so. The condition and reason are written in plain vernacular. Their meaning would have been obvious to any intelligent English-speaker, a fortiori to the members of a specialist planning committee. Those members would have had the text of the condition and reason in front of them when considering the officers' advice.

55. On its plain meaning, the condition required the submission and approval of a scheme showing the mix of uses on the site. It was imposed in order "to ensure that development comes forward in the spirit of Policy ED1 of the Local Plan and that the amount of B2 and B8 uses remaining on site are controlled". The means by which the condition enabled the mix of uses to be "controlled" was through the requirement for the scheme to be approved. In considering whether to approve the scheme, the Council would be obliged to take account of the Local Plan, including Policy ED1. Further, by s. 38(6) of the 2004 Act, the Council would be obliged to decide whether to approve the scheme "in accordance with the plan unless material considerations indicate otherwise". If the scheme proposed was not "in the spirit of Policy ED1", the Council would be likely to reject it. Peel would know this, which—in practical terms, if not as a matter of strict law—would "ensure" that the development comes forward in the spirit of Policy ED1.

56. Ground 2 would succeed if and only if a specialist planning committee member who had read the text of the condition and the reason for it would have been misled in a material way by what the officers said. In my judgment, that test is nowhere close to being met.

57. The written amendment to OR1 said that the new condition 27 would "ensure that the mix provided reflects the floorspace of B2/B8 required under Policy ED1". Even without the admonition to accord a benevolent construction to the words of planning officers, that seems to me to be an adequate description of the effect of condition 27. It uses "ensures" in precisely the same way as the text of the reason for the condition, i.e. the condition "ensures" the relevant mix of uses by imposing a requirement for submission and approval of a scheme, against a background that the scheme is unlikely to be approved if it is not in accordance with, or at least in the spirit of, Policy ED1.

58. The oral advice given by the Chief Planning Officer at the meeting was also not materially misleading. The first passage relied on by Mr Warren said that condition 27 meant that "prior to this first reserved matters application there needs to be a scheme demonstrating the mix of B2/B8 so looking to maintain at least 18,000 square metres of floor areas for B2 and B8". This seems to me to be an accurate way to describe the effect and purpose of condition 27. There "needs to be" a scheme submitted and approved; and this is "looking to" (i.e. has the purpose of) maintain the existing 18,000 sq. m. of B2/B8 floorspace.

59. In the second passage relied on by Mr Warren, it was said that condition 27 was "requiring the submission of a mix of B2 and B8 and class E uses to be submitted – with the objective ensuring that the amount of B2/B8 floor space is not reduced as a result of this development". Again, this was accurate. Condition 27 did indeed require the submission of a scheme showing the mix of class B2/B8 and E uses; and the objective (i.e. the reason for imposing it) was indeed to ensure that the minima in Policy ED1 were maintained, or at least complied with in spirit.

60. The omission of any "parameters" in the text of Condition 27 for the assessment of an application under that condition would be unlawful if and only if it were irrational. There is nothing to suggest that it was. A rational planning authority could conclude that there was no need for it, because the Council would be perfectly able to judge, in the light of Policy ED1, whether to approve the scheme or not. Similarly, there is nothing to show that the absence of any restriction on subsequent change of use within use class E(g), or under the GPDO, were irrational. A reasonable planning committee could decide that it was unnecessary to impose such restrictions.

61. For these reasons, ground 2 fails.

Ground 3

Submissions for ArcelorMittal

62. Mr Warren submitted that Policy ED1 prohibits the grant of planning permission for any use that is not a B2 or B8 use, and for any development which would lead to a loss of existing B2/B8 uses on the site. Despite this, the Council concluded that the proposals (which included non-B2/B8 uses) would not conflict with Policy ED1. This must have involved a misinterpretation of Policy ED1, or at the very least an application of Policy ED1 which was unlawful in that it elided a planning judgment on the overall desirability of the proposals with the prior question whether the proposals accorded with development plan policy: see *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, 1459D-G.

63. This meant that the Council failed to comply with its duty under s.38(6) of the Planning and Compulsory Purchase Act 2004, because the Committee's members resolved to grant the permission without a proper understanding that it departed from adopted development plan policy.

Submissions for the Council

64. Ms Wigley for the Council submitted that the officer had acknowledged that there was no strict compliance with the policy. In any case, the Council was entitled, as a matter of planning judgment, to conclude that the lack of strict compliance with the policy did not amount to a departure from the development plan.

Submissions for Peel

65. Mr Elvin for Peel submitted that the Claimant had failed to identify any of the matters necessary to show that a policy was misinterpreted: see *Trustees of the Barker Mill Estates v Test Valley BC* [2016] EWHC 3028 (Admin), [2017] PTSR 408 at [84].

66. Policy ED1 must be read in the context of the supporting text and particularly paragraphs 4.5.1-2 of the Medway Local Plan 2003. None of the advice in OR1 and OR2 demonstrated a misinterpretation of planning policy. The Council's judgment that there was "broad accordance" with Policy ED1 is not irrational.

Discussion

67. In *R (Cherkley Campaign Ltd) v Mole Valley District Council* [2014] EWCA Civ 567, at [16], Richards LJ (with whom Underhill and Floyd LJJ agreed) said this:

> "…when determining the conformity of a proposed development with a local plan the correct focus is on the plan's detailed policies for the development and use of land in the area. The supporting text consists of descriptive and explanatory matter in respect of the policies and/or a reasoned justification of the policies. That text is plainly relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy."

68. At [84] of his judgment in the *Barker Mill Estates* case, Holgate J said this:

> "Normally a claimant fails to raise a genuine case of misinterpretation of policy unless he identifies (i) the policy wording said to have been misinterpreted, (ii) the interpretation of that language adopted by the decision-maker and (iii) how that interpretation departs from the correct interpretation of the policy wording in question. A failure by the claimant to address these points, as in the present case, is likely to indicate that the complaint is really concerned with application, rather than misinterpretation, of policy."

69. ArcelorMittal's case is that officers misrepresented the effect of Policy ED1, so it is important to start with the policy itself. This said two things about proposals relating to Chatham Port:

(a) that "development will be permitted only for… General Industry Class B2 and storage and distribution (Class B8)"; and

(b) that "[p]roposals for development… resulting in the loss of existing industrial, business or storage and distribution development to other uses will not be permitted".

70. In OR1, officers said this:

> "Policy ED1 of the adopted Local Plan states in summary:
>
> In Chatham Port employment area development will be permitted only for General Industry (class B2) and Storage and Distribution (class B8).
>
> It is considered that this proposal will ensure that this site remains as employment use however it will allow for more flexible interpretation of employment use when compared to the current restrictions as set out within the 2003 Local Plan Policy ED1. The proposal remains in broad accordance with this policy where general industrial (class B2) and storage and distribution (class B8) will be supported.
>
> The new waterfront development will create modern and flexible employment floorspace of up to 31,000m2 within use classes B2, B8 and E(g) as supported by Policy ED1. The flexibility of use classes is thought to be crucial here because it will help attract businesses from a wider pool of

sectors including high-tech, creative media, medical technology, marine and other council growth sectors. The flexibility will also enable the Basin3 campus to come forward via reserved matters applications in stages to meet market demand and help address the council's future employment needs.

Policy ED9 specific to Chatham Port states that Port related development and an expansion of the commercial port of Chatham will be permitted.

The proposed redevelopment of an employment area with more modern buildings and flexible space for employment purposes is not unusual and would not conflict with Policy ED1. Similarly, while Policy ED9 does not protect the site solely for port related development, just that it will be permitted, the proposed redevelopment does not rule out port related uses as this is an outline application. Indeed, one of the current occupiers has made public its proposals for an employment redevelopment of the entire docks site. Linked to this is the fact that based on an independent report in 2022 of the 22 businesses in the industrial estate, 14 were not related to the operation of the Port.

The principle of the proposed development accords with the adopted policy."

71. In OR2, officers added this:

> "New condition 27 above, along with condition 26 seek to secure not only up to 31,000m2 floor area but also to ensure that the mix provided reflects the floorspace of B2/B8 required under Policy ED1 and as such the recommendation and conditions secure the spirit of the Policy and employment aims of the Local Plan. As such the proposal does not represent a Departure from the Development Plan."

72. At the meeting, the Chief Planning Officer said this:

> "Policy ED1 states that in Chatham Port development will be permitted only for B2 and B8 uses. Now I have talked about Condition 27 requiring the submission of a mix of B2 and B8 and class E uses to be submitted – with the objective ensuring that the amount of B2/B8 floor space is not reduced as a result of this development and Condition 26 allows for up to 31,000 square metres which, as Hannah advised, would allow for up to 13,000 square meters of class EG or other floor space. It is considered that this application with those conditions is within the spirit of Policy ED1, the supporting text to Policy ED1 is important as it encourages the improvement of employment areas to enhance the image and efficiency of companies and the environment which is considered important in the way potential investors perceive Medway, that's what's stated in the proceeding paragraphs."

73. In my judgment, what was said by the officers in this case disclosed no misinterpretation of Policy ED1. In OR1, officers made clear that that policy provided that "development will be permitted only for General Industry (class B2) and Storage and Distribution (class B8)". At the meeting the Chief Planning Officer said in terms: "Policy ED1 states that in Chatham Port development will be permitted only for B2 and B8 uses". Everyone knew that the proposal included some uses which were not B2 or B8. A fair reading of the entirety of what the officers said made it clear that, in this respect, the proposals were not in strict accordance with the letter of this part of Policy

ED1, though it was judged to be in accordance with the second material part of that policy (that "[p]roposals for development… resulting in the loss of existing industrial, business or storage and distribution development to other uses will not be permitted") and—more importantly, in the officers' view—in accordance with the aims of the policy.

74. Officers thus advised (in OR1) that the proposals were "in broad accordance with" Policy ED1 and (in OR2) that condition 27 would "secure the spirit of the Policy and employment aims of the Local Plan". The Chief Planning Officer's oral advice at the meeting was the proposals were "within the spirit of Policy ED1". He then made reference to the supporting text to bolster his argument that they were nonetheless consistent with the policy's principal objectives. These phrases signalled very clearly to any intelligent person reading or hearing them, *a fortiori* to a member of a specialist planning committee, that the proposals were not strictly in accordance with the letter of the first part of the policy, but were nonetheless judged to be in broad accordance with its aims. Any complaint about this is, quintessentially, a complaint about planning judgment (which would require ArcelorMittal to show that the judgment was irrational), rather than a complaint about misinterpretation of the policy.

75. Since ground 3 alleges a misinterpretation of Policy ED1, rather than an irrational application of that policy, it fails.

Ground 6(1)

Submissions for ArcelorMittal

76. Under ground 6(1), Mr Warren submitted that, when the matter was before the committee a very specific question was posed to officers about whether the uses on the site could be changed to residential uses. The Chief Planning Officer's reply was that the proposal "does not include any housing… it is an employment application on an employment site". This was misleading by omission because it failed to explain that, once the permission is built out, the use of the site could be changed to residential use without any further planning permission using permitted development rights under the GPDO.

Submissions for the Council

77. Ms Wigley accepted that, hypothetically, there could be a change from class E to residential use in the future (subject to an application for prior approval) but that this does not change what the application included, nor what was to be considered by committee: see *R (Barr) v. North Somerset Council and Sidcot School* [2015] EWHC 1735 (Admin), at [66] and [71].

78. It was not irrational for the Council to confine its consideration to the planning application itself, which did not include residential uses. This was especially so in circumstances where there was just one concern expressed by one member about that issue in this case, and there was nothing before members to suggest that future conversion to residential use was a realistic prospect: see *Barr,* [73].

Submissions for Peel

79. Mr Elvin for Peel submitted that officers were correct to advise the Committee that the proposed development did not include residential use. The fact that this might change

in certain circumstances was not a material consideration in the determination of the application.

80. The fact that a matter is raised by a member does not make it a material or mandatory material consideration. The Courts have consistently treated with circumspection statements made by individual members in a debate leading to a decision to grant permission: see, for example, *R (Bishops Stortford Civic Federation) v East Hertfordshire DC* [2014] EWHC 348 (Admin), [2014] PTSR 1035 at [32]-[41] and *R (Goesa) v Eastleigh BC* [2022] EWHC 1211 (Admin), [2022] PTSR 1473 at [170]-[188].

Discussion

81. The possibility of a future conversion to housing use arose in the course of an intervention made by a councillor (Councillor Tejan) who was not a member of the Committee. He had been permitted to address the Committee for 5 minutes. His main point was that the proposals could result in loss of employment. He made a series of other points: that the proposals would result in an increase in carbon dioxide emissions; that they were contrary to the views of some 2,000 residents who had signed a petition; that the decision was premature and rushed; that it was not appropriate for it to be considered in the run-up to a general election; and that the meeting should not have been held in the half-term holiday. Alongside these points, he also said: "There's no guarantee that the office space has been proposed will not remain unoccupied or be converted to residential in the future."

82. There is no suggestion that the Chief Planning Officer said anything about this issue that was inaccurate. What he said was: "This is not a residential application… this is an employment application on an employment site." As everyone agrees, that was true. The question is whether he was obliged to address in terms something that he did not address, namely the possibility that—once the permission had been built out—the uses could be changed to residential under the GPDO. That turns on whether that possibility was a mandatory material consideration.

83. As Holgate J said in the *Barr* case at [74], "there is an important distinction between a consideration which is 'potentially relevant' so that a decision maker does not err in law if he has regard to it, as opposed to cases where a consideration is 'necessarily relevant' so that he errs in law by failing to have regard to it."

84. In this case, the prospect of a change of use in the future was remote. Such a change of use would be permitted under the GPDO only once the permission had been implemented and the permitted uses in place for two years and then only subject to various limitations and conditions. One of these is that the developer must apply to the local planning authority for a determination as to whether prior approval of the authority is required in relation to various matters, including "(g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses". There was nothing to suggest that such a change of use was likely, in an area the council considers suitable for general or heavy industry, waste management, storage and/or distribution.

85. In those circumstances, I therefore take the same view as Mould J, who refused permission to apply for judicial review on this ground on the papers. It is not reasonably arguable that the remote possibility of a future change of use under the GPDO was a mandatorily relevant factor, i.e. one which it would be irrational not to take into account.

Conclusion

86. For these reasons, in respect of grounds 1-3, the claim is dismissed. In respect of ground 6(1) permission to apply for judicial review is refused.

87. In these circumstances, Peel's offer to execute a unilateral undertaking to enter into a planning obligation under s. 106 of the 1990 Act is otiose. If it had been necessary to consider the matter, I would have regarded that undertaking as sufficient to justify the refusal of a remedy in relation to grounds 1, 2 and 6(1) and, following the procedure adopted by Holgate J in *R (Nicholson) v Allerdale Borough Council* [2015] EWHC 2510 (Admin), would have set or adjourned the remedy hearing to allow Peel to execute the undertaking.