Neutral Citation Number: [2026] EWHC 4 (Admin)

Case No: AC-2025-LON-000192

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

IN THE MATTER OF A STATUTORY REVIEW UNDER SECTION 288 OF THE TOWN AND COUNTRY PLANNING ACT 1990

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/01/2026

Before :

THE HON SIR PETER LANE

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Between :

SAVE THE FOX AND HOUNDS CAMPAIGN LTD	**Claimant**
- and –	
(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	**Defendants**
(2) STRATFORD ON AVON DISTRICT COUNCIL	
(3) STEPHEN CHARLES ALLELY AND JACKIE HARDING	

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Mr Simon Bell (direct access counsel) for the claimant
Mr Ben Fullbrook (instructed by the Government Legal Department) for the first defendant
The second and third defendants were not present or represented at the hearing

Hearing date: 18 November 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 13 January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HON SIR PETER LANE:

1. The Fox and Hounds Inn ("the pub") is situated in the village of Great Wolford, Warwickshire. Originally a farmhouse, the premises operated for very many years as a pub, until the third defendants closed it in 2016. There have since been four planning applications to change the use of the pub to purely residential use. The present proceedings are directly concerned with the third such application, which was refused by the second defendant on 22 June 2023. The change of use sought was in respect of two dwellings. The second defendant's refusal was based on alleged heritage harm, which was judged not to be outweighed by the public benefits.

2. The third defendants appealed to the first defendant. The appeal proceedings were conducted by way of written representations. In a written decision dated 10 December 2024, the Inspector allowed the appeal, subject to conditions.

3. According to the first witness statement of Mr Van Helden, who is a director of the claimant and a resident of Great Wolford, the claimant was established "purely to act on behalf of the local community in its efforts to save the Fox and Hounds Inn from closing as a public house permanently." The claimant sought statutory review of the inspector's decision. Permission was granted by Tim Smith, sitting as a Deputy High Court judge, on 3 April 2025. There are two grounds of challenge. Ground 1 alleges that the inspector erred in proceeding to decide the appeal on the basis of written representations, rather than following a hearing or a public inquiry. Ground 2 contends that the inspector failed to have regard to material considerations; namely, the representations of the Wolfords Joint Parsh Council ("the Parish Council") dated 4 May 2024 and, in particular, the offers made in March 2024 by potential operators to purchase the pub, as highlighted in those representations.

4. The hearing before me took place on 18 November 2025. For the reasons I shall give in due course, I granted the first defendant's application dated 14 November 2025 to amend the detailed grounds of defence and granted the claimant's related application under CPR 17 to amend the statement of facts and grounds, so as to enable the claimant to advance ground 1 by way of judicial review, if and insofar as necessary to enable that ground to be substantively considered by the court.

5. On 18 November, the claimant was represented by Mr Bell and the first defendant by Mr Fullbrook. I am grateful to them for the high quality of their written and oral submissions.

The facts in more detail

6. Having sketched the outline of the case, it is necessary to look at it in more detail. The second defendant's refusal decision of 22 June 2023 said that "insufficient information has been submitted to demonstrate that retention of the asset as a single residential unit is not the optimum use of the heritage asset. Furthermore, the public benefits arising from the 2 no. Open market dwellings are limited and would not outweigh the less than substantial harm caused to the Grade II Listed Fox and Hounds Inn and the Conservation Area." As a result, the application was not considered to comply with the second defendant's Core Strategy or the National Planning Policy Framework.

7. In order to consider the third application, the second defendant had commissioned an expert report from Everard Cole, which concluded that the pub was not commercially viable. The Parish Council questioned the conclusions of Everard Cole.

8. Whilst the appeal against the refusal of the third application was pending before the first defendant, the third defendants had made a fourth application for permission to change the use of the pub, this time to a single dwelling. In order to consider this fourth application, the second defendant requested Everard Cole to produce an updated view on viability. Everard Cole reported on 19 September 2023 that no new issues had emerged but a number of factors, such as running costs, had deteriorated since the time of their original report.

9. A separate viability report had been prepared by Morgan & Clarke for the claimant. The Morgan & Clarke report was submitted by the Parish Council as part of their formal consultation response to the fourth application. This report concluded that the pub was viable. The second defendant then commissioned Everard Cole to comment on the methodology and conclusions of Morgan & Clarke. Everard Cole concluded that the assumptions and calculations of Morgan & Clarke were not credible. The Parish Council then submitted a rebuttal response from Morgan & Clarke.

10. The information in paragraph 9 above is taken from the Officer's Report to the second defendant in respect of the fourth application. The Officer considered that the model employed by Morgan & Clarke "sets overly strict, and unrealistic criteria that would be required to enable a pub to trade in a viable way." The Parish Council made reference to "recent offers ranging from £425,000 to £490,000 to purchase Fox & Hounds, which surpassed the estimate valuations by Avison Young and Everard Cole". The Parish Council also submitted that the marketing information relied on by Everard Cole was out of date. The Officer observed that, although the information was outdated, "only one experienced pub operator submitted an offer to purchase the Fox & Hounds, which was well below the asking price." The Officer also did not regard examples provided by Morgan & Clarke of recent pub acquisitions as providing sufficient information to show these were in truth comparable examples. Overall, the Officer attached "great weight to the independent and impartial advice received from Everard Cole." The Officer therefore recommended that the pub was not viable. He recommended that the application should be granted.

11. The second defendant's planning committee did not agree. On 20 August 2024, it resolved to refuse the fourth application. The notice of decision states that "On the basis of viability and marketing information... and in the light of the recent reasonable offers made to purchase the Fox & Hounds Inn, the Local Planning Authority considered that there is a realistic prospect of the facility continuing for commercial and/or operational reasons on the site...".

12. As I shall explain shortly, the fourth application is relevant to the Inspector's impugned decision. It is, however, necessary to describe in detail the process leading to that decision, since ground 1 is concerned with that process.

13. In the planning appeal form dated 20 December 2023, the third defendants stated that they wished the appeal against the refusal of the third application to be determined by written representations. On 4 April 2024, the Planning Inspectorate ("PINS") sent the

second defendant a letter, giving that date as the starting date for the appeal. The letter said:

> "The appellant(s) has requested the Written representations procedure. In accordance with s 319A of the Act we have applied the criteria and considered all representations received, including the appellant(s) preferred choice. We consider that the Written representations procedure is suitable and we intend to determine this appeal by this procedure."

14. In its appeal questionnaire dated 8 April 2024, the second defendant was asked "Do you consider the written representations procedure to be suitable?". The second defendant's reply was "Yes."

15. On 22 April 2024, the Parish Council wrote to PINS. It requested "that the Inspector who is appointed gives due consideration as to which procedure is appropriate for this appeal. Noting that "the appeal is being dealt with by means of written representations," The Parish Council said that, "given the substantial local interest and the impacts the Appeal proposal presents, the Parish Council considers that the appeal would be more appropriately dealt with by way of a hearing or local public inquiry." The letter stated that "at the time of the original application 235 letters of objection were submitted by concerned residents and bodies." Since a "key matter of viability of the pub is the subject of active dispute", the Parish Council suggested that this "evidence should be tested by formal questioning." The letter asked the inspector to notify it of the decision as soon as it was made. The Parish Council would wish to know the reasons, should the Inspector disagree with its view as to the mode of determination. It was pointed out that "such decisions are amenable to judicial review" and that "members of the local community would consider bringing such a claim if needs be...".

16. On 24 April 2024, the claimant wrote to PINS to request the Inspector as a matter of urgency to "consider whether or not this is a case that should be dealt with by way of the written representations procedure", pointing out that 6.2.6 of the Procedural Guide to Planning Appeals – England stated that PINS "will keep the choice of procedure under review throughout the appeal and that a procedure may be changed." Given the degree of local opposition, including the 235 objections, the claimant considered that "the appeal would be best suited for a hearing...". There was also a request to be notified of the reasons for the inspector's decision as soon as it was made.

17. During the course of the appeal, the Parish Council (but not the claimant) submitted an objection, challenging the validity of the evidence on viability relied upon by the third defendants. The Parish Council argued that the valuation of the pub by Everard Coles of £375,000 was in line with offers received in 2018 and therefore credible. Two offers to buy, at £490,000 and £420,000 made in March 2024 showed that the pub was regarded as a going concern by other potential operators. Recent pub acquisitions included the Farriers Arms, Todenham, the Cherington Arms, Cherington, the Black Horse, Salford and the Plough Inn, Stretton-under-Fosse.

18. The "start" letter told the second defendant that it must notify any person who was notified or consulted about the planning application that led to the refusal which was being appealed, as well as other interested persons who made representations to the second defendant about the application. The second defendant was to tell them that any comments they made at the application stage would be sent to PINS and would be considered by the

Inspector (unless withdrawn). If they wished to make additional comments, that had to be done by 9 May 2024. PINS received objections to the appeal from the claimant, the Parish Council and six local residents; but, for the reasons just given, the Inspector also had access to the 235 objections made in respect of the third planning application.

The Inspector's decision

19. The Inspector's decision of 10 December 2024 included this paragraph under the heading "Preliminary Matters":

> "3. At the time of the application the Council considered the principle of the conversion of the public house to a residential use [was] acceptable', and the contention was over the sub-division to 2 dwellings. Accordingly, the viability of the pub was not part of the reason for refusal. The Council and Parish Council remarked during this appeal, albeit belatedly, that another application for a residential change of use for the appeal building was refused on such a ground."

20. At paragraph 11, the Inspector concluded that, whilst the permanent cessation of the use as an Inn would undermine its historic interest as a focal point in the life of the village, this was tempered by the fact that it was originally used as a dwelling. The inability of the public to access the interior of the building nevertheless meant that the proposed development would be marginally harmful to the special interest and significance of the listed building and the conservation area. In paragraphs 12 to 16, the Inspector concluded that the building could be divided into two dwellings without affecting the listed fabric. Use as two dwellings would not be overly intensive, compared with use as a pub. Overall, the permanent cessation of the pub would cause less than substantial harm to the listed building and the conservation area.

21. Paragraphs 17 to 26 of the decision concern the viability of the pub:

> "17. Policy AS.10 of the CS allows for the conversion of a building to residential within a village, to which the proposal would comply. Policy CS.25 of the CS seeks the retention of community facilities including pubs unless there is no realistic prospect for commercial or operation reasons. Policy CS.22 of the CS states an existing employment site should not be redeveloped or converted to non-employment use unless it is no longer viable. Paragraphs 88 and 97 of the Framework also acknowledge the contribution of pubs to local communities. Paragraph 8 notes the social benefit of accessible services and also has economic and environmental objectives. The Parish Council also paraphrase the Public Houses Planning Advice note adopted by the Council in May 2024, which seeks to prevent the undue loss of pubs. This seeks evidence of at least 6 months marketing as a pub, viability assessment and community engagement.
>
> 18. The Appellant submitted a viability statement dated June 2022 with the planning application, which considered the operating accounts, potential customer base and competition, contribution of letting rooms, and operating costs. This concluded the pub would not be viable.
>
> 19. A marketing report was also submitted with the planning application which states the building was advertised for sale as a pub via the internet, trade publications and

direct contact between 2018 and 2019. The few offers received were not commensurate with the reasonable value of the building.

20. The Council commissioned their own consultants to undertake a viability assessment, which also found the pub not to be viable.

21. The Appellant forwarded the Council officer's report on the other application for the change of use of this pub. Whilst this was refused for loss of the pub, the report nonetheless accepts their consultant's findings on lack of viability.

22. The Parish Council also submitted a late response to this appeal with comments on viability based on a report5 they commissioned, which alludes to the potential for some financial savings including finding cut price supplies, accepting no minimum monthly wages and having to be very innovative, which I do not consider realistic. Moreover, that report was considered by the Council's consultants, and their response dated 19 September 2023, projects the costs/turnover and finds a loss, confirming the pub would not be commercially viable. They note the commercial challenges of the operating environment and conclude energy, staffing and food/drink costs to have risen considerably since they have been involved.

23. Given its prolonged closure since 2016, regular and loyal customers have been lost, and it would be hard to build up a sufficient customer base again. In addition, the building would have to be re-equipped, re-fitted and stocked to function as a pub, which would require investment well ahead of any potential income.

24. The village has had 'pop up pubs' as photographed in the VDS, and I note the comments from local residents recorded in support of the pub. The building was designated as an Asset of Community Value in 2016 and redesignated, expiring 27 September 2026. Whilst this demonstrates the interest in a pub and is a material consideration, it does not take precedence over the consideration of the Development Plan policies. A considerable customer base would be needed to make and continually sustain its viability and the Council's own consultant's report demonstrates it would not be viable.

25. Whilst several examples are quoted by local residents of closed pubs being reestablished, it is not evident how comparable they are to the specific economics of this building.

26. Accordingly, taking the above together as a whole I find that the proposal would not be contrary to Policies CS.22 and CS.25 or the Framework paragraphs 8, 88 and 97. Whilst it would not fully accord with all aspects of the Council's advice note, fundamentally the lack of viability has been clearly shown."

Legal framework

22. Section 319A of the Town and Country Planning Act 1990 provides (insofar as it is relevant):

> "(1) The Secretary of State must make a determination as to the procedure by which proceedings to which this section applies are to be considered.
>
> (2) A determination under subsection (1) must provide for the proceedings to be considered in whichever of the following ways appears to the Secretary of State to be most appropriate —
>
> (a) at a local inquiry;
> (b) at a hearing;
> (c) on the basis of representations in writing …
>
> ….
>
> (6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).
>
> (7) This section applies to …
>
> …
>
> (b) an appeal under section 78 against the decision of a local planning authority in England …

23. The Procedural Guide: Planning appeals - England includes the following:

> ***"6.2 Procedure determination***
> *6.2.1 There are 3 procedures for handling appeals: written representations, hearings and inquiries...*
> *6.2.2 The Planning Inspectorate decide which procedure each appeal will follow.*
> *6.2.3 In making our decision, we will consider the views of the appellant and the LPA and the criteria for procedure determination.*
> *6.2.4 Where our choice differs from that of the LPA and appellant, we will explain the reasons for our choice.*
> *6.2.5 The appellant and the LPA can ask for the choice to be reviewed by a senior officer.*
> *6.2.6 We keep our choice of procedure under review throughout the appeal. Subject to notification and procedural requirements, we may change the procedure. We may also, either at the start or at any point throughout the appeal, combine procedures".*

24. The Criteria to which reference has already been made are to be found in the PINS Guidance "Criteria for determining the procedure for planning, enforcement, advertisement and discontinuance notice appeals" . The Criteria include the following:

> ***1. Written representations***
> *written representations would be appropriate if:*
> • *the planning issues raised or, in an enforcement appeal, the grounds of appeal, can be clearly understood from the appeal documents and a site inspection (if required (A small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents))*
> • *the issues are not complex and the Inspector is not likely to need to test the evidence by questioning or to clarify any other matters*

- *in an enforcement appeal the alleged breach, and the requirements of the notice, are clear*

2. Hearing

a hearing would be appropriate if:

- *the Inspector is likely to need to test the evidence by questioning or to clarify matters (for example where detailed evidence on housing land supply needs to be tested by questioning)*
- *the status or personal circumstances of the appellant are at issue (for example whether in traveller appeals the definition in Annex 1 of the Department for Levelling Up, Housing and Communities planning policy for traveller sites is met, or in agricultural dwelling appeals)*
- *there is no need for evidence to be tested through formal questioning by an advocate or given on oath*
- *the case has generated a level of local interest such as to warrant a hearing (Where the proposal has generated significant local interest a hearing or inquiry may need to be considered. In such circumstances the local planning authority should indicate which procedure it considers would be most appropriate taking account of the number of people likely to attend and participate at the event. We will take that advice into account in reaching the decision as to the appropriate procedure)*
- *it can reasonably be expected that the parties will be able to present their own cases (supported by professional witnesses if required) without the need for an advocate to represent them*
- *in an enforcement appeal, the grounds of appeal, the alleged breach, and the requirements of the notice, are relatively straightforward*

3. Inquiry

an inquiry would be appropriate if:

- *there is a clearly explained need for the evidence to be tested through formal questioning by an advocate (This does not preclude an appellant representing themselves as an advocate)*
- *the issues are complex (for example where large amounts of highly technical data are likely to be provided in evidence)*
- *the appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing (where the proposal has generated significant local interest a hearing or inquiry may need to be considered. In such circumstances the local planning authority should indicate which procedure it considers would be most appropriate taking account of the number of people likely to attend and participate at the event. We will take that advice into account in reaching the decision as to the appropriate procedure)*
- *in an enforcement appeal, evidence needs to be given on oath (for example where witnesses are giving factual evidence about how long the alleged unauthorised use has been taking place)*
- *in an enforcement appeal, the alleged breach, or the requirements of the notice, are unusual and particularly contentious.*

Note - It is considered that the prospect of legal submissions being made is not, on its own, a reason why a case would need to be conducted by inquiry. Where a party considers that legal submissions will be required (and are considered to be complex such as to warrant being made orally), the Inspectorate requires that the matters on

which submissions will be made are fully explained – including why they may require an inquiry - at the outset of the appeal or otherwise at the earliest opportunity."

25. The status of the Criteria was addressed by Wyn Williams J in *Westerleigh Group Ltd v SSCLG* [2014] EWHC 4313 (Admin):

> "33. ... The criteria, themselves, contain a clear warning to the effect that they must be applied with common sense and they cannot be regarded as "fully prescriptive or entirely determinative". It must be a matter of planning judgment whether or not the planning issues raised on an appeal are to be regarded as complex, thereby requiring elucidation through a formal process of questioning and cross-examination or alternatively capable of being properly understood from the documentation supplied by the principal parties and other objectors and following an appropriate site visit.

26. In similar vein, in *North Norfolk DC v SSHCLG [2019] JPL 87*, Holgate J held that "The judgment about how complex the issues actually are, the need for testing through advocates, and how they can be resolved with further written representations and a site visit, is very much a matter for the expertise of the Inspector." (paragraph 29). At paragraph 32, Holgate J stated that the level of public interest can be sufficient on its own to justify a public inquiry, this will not necessarily be so.

The Inspector's witness statement

27. When granting permission, Tim Smith had this to say about the claimant's ground 1:

> "Ground 1 relates to the mode of appeal, and in particular the Claimant's request that a mode other than written representations be utilised. The Claimant's letter to the Planning Inspectorate (CB58) gives as reasons for the request (i) the level of public interest and (ii) the need for "hearing evidence directly from experts and proprietors within the leisure industry and from members of the Campaign and local community". Point (ii) has now been refined in the claim to refer to the need to test viability evidence about acquiring and running the pub as a going concern. Given the context of the appeal it is reasonable to infer that this more detailed point was at least part of the broader explanation given. As to the degree of public involvement alone, I am more sceptical. The appeal is not a referendum. The level of public interest is a relevant factor but not a determinative factor. The judgment of Ouseley J in North Norfolk DC (cited at SFG§25) does not say otherwise. I am more persuaded by the argument of the need to test viability evidence through a means other than written representations. I accept that the First Defendant has a broad discretion for determining the mode of appeal and that it had done so at the outset. I do not read too much into the absence of comment on appeal mode in the Inspector's decision letter: typically determination of the mode of appeal would be a matter for the Planning Inspectorate's administrative staff before the appeal is decided rather than for the Inspector himself. But the challenge is brought against the First Defendant, on whose behalf both PINS and the Inspector act, and what persuades me that this ground is arguable is the apparent absence of any evidence that the Claimant's reasoned request to revisit the question about the mode of appeal was even considered by PINS or the Inspector."

28. The last sentence of these observations has elicited a witness statement from the Inspector, which includes the following:

2. I have been an Inspector appointed by the Secretary of State since 3 February 2020.

3. I was appointed as the Inspector in this matter on 31 July 2024. My Appeal Decision of 10 December 2024 can be found in the Court bundle at 33-38.

4. At the start of the appeal the planning authority completed the questionnaire to commence an appeal and to the question whether written representations are suitable, the Council responded "yes" as exhibited at JL1.

5. I was fully aware of the requests for a hearing. The first screen for the digital record of each appeal case has a centre box titled "important information". This is permanently displayed, without any clicking to open it. The first sentence in this box says "request received from Wolford PC – COP to Hearing / Inquiry" [Change of Procedure] and shows that the request from the Parish Council was readily apparent. I exhibit a screenshot of this page at JL2.

6. In addition, the electronic case file at folder "09 Other Appeal Documents" shows at document 2 "Wolford PC request COP to hearing Inquiry" and at document 4 "Save the Fox and Hounds Pub Campaign Request for Hearing or Inquiry". I attach a screenshot of that page at JL3.

7. Prior to my site visit on 22 August 2024 I systematically went through the electronic case file. I reviewed the requests by the Claimant and Wolford Parish Council and, having considered the correspondence, I reached a judgement that a written representation appeal was appropriate.

8. I am shown the Parish Council's submission dated 4 May 2024, exhibited at JL4, which includes appended to the document the two offers to purchase the pub. I considered this document and referenced my review and considerations of this document at DL22 where I considered the Parish Council having submitted a late response to the appeal. I accepted this late submission and the submission helped inform my decision."

Procedural matters

29. I return to the procedural matters mentioned in paragraph 4 above. On 14 November, the penultimate working day before the hearing, the first defendant applied to amend his detailed grounds of defence. The first defendant accepted that the application was being made late, the reason being that the point sought to be raised by the amendment was overlooked by those representing him. Although that was not an excuse, the point sought to be raised was said to be "a complete procedural bar to Ground 1".

30. The proposed amendment is as follows. Ground 1 consists of a challenge to the determination under section 319A of the 1990 Act that the appeal of the third defendants be considered by way of written representations. Section 288(1) provides a right for any person who "is aggrieved by any order to which this section applies" to make an application to the High Court. Section 288(4) provides that "this section applies to any such order as is mentioned in subsection (2) of section 284 and to any such action on the part of the Secretary of State ... as is mentioned in subsection (3) of that section." Section

284 does not, however, mention orders made under section 319A. As a result, the first defendant contends that the claimant is prohibited from challenging any such order by means of the section 288 route. Any such challenge would have to be brought by way of judicial review.

31. The first defendant relies upon the judgment of Wynn Williams J at paragraph 23 of *Westerleigh*, which relied upon paragraph 135 of the judgment of Lewis J in *Connors and others v SSCLG and others* [2014] EWHC 2358 (Admin).

32. In *Connors,* an issue arose at trial over the appellants' ability to challenge the Secretary of State's decision to direct that a statutory appeal be determined by the Secretary of State rather than an inspector. The power of direction was contained in section 79 of, and Schedule 6 to, the 1990 Act. Those provisions were not mentioned in section 284(2) or (3). Although Lewis J acknowledged that it would theoretically be open to the court to direct that the claim form in the section 288 proceedings stand as a claim form in judicial review proceedings (where the court could consider the lawfulness of such a direction,) "it would not be appropriate, at this late stage of the proceedings, to seek to turn a challenge to the substantive decision on the appeal against the refusal of planning permission into a challenge on the different question of the procedure governing how such appeals will be decided" (paragraph 136). Lewis J considered that any such challenge should have been made promptly and in any event within 3 months of the direction.

33. In *Westerleigh*, counsel for the Secretary of State, relying upon that passage from *Connors*, submitted that "the various decisions of the Inspectorate relating to the mode of appeal which preceded the Inspector's determination are not susceptible to challenge under section 288 of the 1990 Act". At paragraph 23, Wyn Williams J said that he was of the view that counsel for the Secretary of State "is correct." Even if he was wrong, however, Wyn Williams J nevertheless considered that "decisions of the Inspectorate are, nonetheless, clearly important context to the decision taken by the Inspector himself to determine the appeal under the written representations procedure. Inevitably, therefore, they require some analysis". He then went on to consider directly the Inspector's approach to the mode of the appeal.

34. The approach taken by Wyn Williams J in *Westerleigh* therefore appears to have been to treat the Inspector's decision on the mode of appeal as an integral aspect of the "decision on an appeal under section 78" of the 1990 Act, which is the decision mentioned in section 284(3)(b) and thus within the ambit of a section 288 challenge. Since the present claimant's complaint under ground 1 is specifically about the Inspector's approach to the mode of determining the appeal, *Westerleigh* is not, perhaps, supportive of the argument advanced in the first defendant's proposed amended grounds of defence. On the contrary, it would seem that the first defendant would have to persuade me not to follow *Westerleigh* on this issue. That observation chimes with Mr Bell's written response to the application, where he argues, in respect of ground 1, that the "challenge is brought to the substantive decision. This falls within s. 288 TCPA 1990."

35. This is not, however, the time or place to determine such a jurisdictional issue. The claimant has always made it clear from its ground 1 that it seeks to quash the Inspector's decision on the basis that the Inspector erred in continuing with the written representations procedure for determining the appeal. Permission having been granted on that ground and the parties having prepared their cases on the basis that ground 1 fell to be substantively

determined, it would be contrary to the overriding objective to countenance a situation in which the claimant might be unable to succeed on that ground, irrespective of the underlying merits, because it had not brought a judicial review along with its section 288 claim.

36. I concluded that the only fair and proportionate course was to allow both the application of the first defendant and the consequential application of Mr Bell at the hearing that I should exercise the court's power under CPR 17 to enable the claimant to advance ground 1 by means of judicial review, for which permission is granted. This meant the parties' submissions at the hearing proceeded as it was anticipated they would, before 14 November.

The claimant's case

Ground 1 (mode of determination)

37. Mr Bell highlights the fact that the Inspector's witness statement was provided following the grant of permission and the observations of the Deputy Judge, set out above, regarding the lack of anything to show that the Inspector considered the requests of the claimant and the second defendant that the appeal should proceed by way of a hearing or inquiry. The Inspector exhibits screenshots from the electronic case file, showing the requests of the Parish Council and the claimant. Mr Bell says that the screenshots must date from long after the site visit in August 2024, as the decision date, 10 December 2024, is to be seen on the screenshot. Furthermore, the Inspector's statement is dated almost nine months after he says (at paragraph 5) that he confirmed the appeal was to proceed by way of written representations. The Inspector has not sought to exhibit any contemporaneous notes, setting out his decision or demonstrating how, if at all, he considered the Criteria when revisiting the mode of determination. Nor are there any contemporaneous emails or other correspondence on the matter from PINS; nor anything to suggest the claimant and the Parish Council were to be notified of the decision.

38. The first screenshot shows that the request from the Parish Council was sent to an "N Holmes", who is not otherwise identified and whose significance is not explained. The claimant's request does not appear even to have been passed to N Holmes. No decision in response to the requests is recorded, nor a date on which such a decision was reached by the Inspector. The second screenshot is a list of emails/ msg files. They show the requests made for the mode of determination to be reconsidered but not the decision.

39. Mr Bell cautions that what is now relied on by the first defendant is evidence amounting to an *ex-post facto* explanation or justification, which does not include any contemporaneous material to support it. The only reasons advanced for the decision are those settled by Mr Fullbrook in paragraphs 26 to 28 of the first defendant's detailed grounds of defence. It therefore remains impossible to understand the Inspector's reasoning for proceeding with the written representations procedure. The Inspector's assertion that he was fully aware of the request for a hearing ignores the fact that the second defendant asked for a hearing or a public local inquiry. The failure to provide understandable reasons amounts to a breach of natural justice.

40. The level of concern regarding the appeal cannot be judged by reference to the small number of objections to the development sent during the appeal process, since those who

had objected to the second defendant were told that their representations would be considered in connection with the appeal.

41. Mr Bell draws attention to the judgment of Elias LJ in *Oakley v South Cambridgeshire District Council* [2017] EWCA Civ 71; [2017] 1 WLR 3765, at paragraph 26:

> "There are powerful reasons why it is desirable for administrative bodies to give reasons for their decisions. They include improving the quality of decisions by focusing the mind of the decision-making body and thereby increasing the likelihood that the decision will be lawfully made; promoting public confidence in the decision-making process; providing, or at least facilitating, the opportunity for those affected to consider whether the decision was lawfully reached, thereby facilitating the process of judicial review or the exercise of any right of appeal; and respecting the individual's interest in understanding — and perhaps thereby more readily accepting — why a decision affecting him has been made. This last consideration is reinforced where an interested third party has taken an active part in the decision making-process, for example by making representations in the course of consultations. Indeed, the process of consultation is arguably undermined if potential consultees are left in the dark as to what influence, if any, their representations had."

And later:

> "32. There is a strong analogy between the need to give reasons in order not to frustrate a statutory right of appeal and the need to do so in order not to frustrate a potential application for judicial review. However, whatever the merits of the analogy, if this were always to ground a basis for requiring reasons to be given, it would be inconsistent with the lack of any general common law obligation to give reasons. Nonetheless, there will be many cases where it is in the public interest that affected parties should be able to hold the administration to account for their decisions, and in the absence of a right of appeal, the only way to do so is by an application for judicial review. Where the nature of the decision is one which demands effective accountability, the analogy with a right of appeal is surely apt."
>
> 33. Absent reasons, there are considerable difficulties facing a potential applicant who suspects that something may be wrong with a decision but is unsure. Unless the decision is plainly perverse, the assumption will necessarily be that the decision was lawfully made; there is a presumption to that effect given that the burden of establishing illegality is on the applicant. No doubt there will be cases where a party has sufficient material to be able to mount some sort of legal challenge and get beyond the leave stage. In those circumstances the respondent will effectively be compelled to provide reasons in order to defend the case because if no reasons are given, the court may infer that the decision is bad: see the seminal case of Padfield [1968] AC 997 (HL) . Even then, however, the applicant may not be given full reasons, merely such explanation of the reasoning as meets the particular ground of challenge. Moreover, if the basis of the claim is too speculative — as it may well be where no reasons are available — the application is likely to fail at the leave stage."

42. Mr Bell submits that the first defendant can derive no material support from the well-known judgment of Lindblom LJ in *St Modwen Developments Ltd v Secretary of State*

[2018] PTSR 746, in which it was held that decision letters of the Secretary of State and inspectors are written primarily for parties who know the issues between them and the evidence and arguments deployed in respect of those issues; that reasons need refer only to the main disputed issues; that the weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision maker, subject only to *Wednesbury* challenge; and that section 288 of the 1990 Act does not afford an opportunity to review the planning merits of an inspector's decision (paragraph 6). In the present case, the Inspector was tasked not just with determining the appeal but also with deciding two third party applications on the mode of determination. Those applications were not "material considerations" but, rather, "procedural applications". The Inspector should at least have identified in the decision whether or not he had dealt with them.

43. The first defendant forgets, according to Mr Bell, that the section 288 challenge is not brought by either of the main parties to the appeal. In the written representations procedure, third parties are largely kept in the dark about the process before the decision on the appeal is issued. In the present case, the claimant and the Parish Council were in that position until the defence to the section 288 challenge was filed, when they learned for the first time that the Inspector claimed he had reviewed the mode of determination and in effect refused the applications. The claimant remains in the dark as to the Inspector's reasons.

Ground 2 (failure to take account of material considerations)

44. Mr Bell says his client struggles to understand how the Inspector took into account the representations of the Parish Council. The decision contains no reference to the offers to purchase the pub as a going concern, which had been highlighted by the Parish Council. These offers were plainly relevant to the issue of viability. They were offers to buy the pub as a going concern, not just to buy the building. Had the Inspector considered the representation of the second defendant, he would have been aware that Avison Young, the independent valuer appointed by the second defendant, had valued the pub in 2019 as between £290,000 (closed) and £350,00 (as a going concern). The offers that the Inspector considered were in the sums of £340,000, £415,000 and £475,000. However, the Parish Council made it clear there were offers in March 2024 to buy the pub as a going concern, in the sums of £425,000 and £490,000. The Inspector either did not consider this evidence; or else misunderstood it. The second defendant's reason for refusing the fourth planning application explained why it considered the pub was realistically viable, "in light of the recent reasonable offers".

45. The third defendants were invited to make further representations in the light of the second defendant's refusal of the fourth planning application. In contrast, Mr Bell says that the claimant was not made aware of the request or the response to it, despite the claimant's interest in the appeal. Had it been made aware, then, as Mr Van Helden says at paragraph 7 of his second witness statement, the claimant would have wished to comment, including on the weight to be placed on the fourth refusal and the offers to purchase the pub as a going concern, which in his words "appear to have had such an effect on the Second Defendant to the extent it refused the subsequent application. "The Inspector should have sought the views of the claimant and the Parish Council, given they had both produced evidence on viability in connection with the fourth application. In the event, the Inspector's decision does not show how he considered the fourth refusal (both the fact of

refusal and the second defendant's reasons for it) or the weight he attributed to it. If the appeal had been determined by way of hearing or inquiry, Mr Bell says all this would have been made known to the Inspector who, it is to be hoped, would not have overlooked it. The same is true of the other matters raised under ground 2.

Simplex

46. In respect of both of the grounds, the first defendant argues, in the alternative to his primary contention that there is no error, that the decision would inevitably have been the same. Mr Bell submits that the high bar needed to enable the court to refuse relief on a *Simplex* basis is not met, as regards both grounds.

Discussion

Ground 1

47. The first aspect of ground 1 is the contention that the Inspector did not have any regard to the requests of the claimant and the Parish Council that the appeal should be determined by way of a hearing or public inquiry. As I have recorded, the state of the evidence on this aspect was such as to persuade the Deputy Judge to grant permission on that ground.

48. The Inspector's witness statement is clear. Prior to his site visit on 22 August 2024, he went through the electronic case file. The requests from the claimant and the Parish Council were in that file. The Inspector "reviewed the requests by the Claimant and Wolford Parish Council and, having considered the correspondence, I reached a judgement that a written representation appeal was appropriate" (paragraph 7 of the witness statement).

49. Mr Bell questions the evidence of the exhibited screenshots, which record the position after the the appeal had been decided in December 2024. That is explained by the fact that, as Mr Fullbrook points out, the electronic case file is being updated from time to time. It might have been preferable to have exhibited a picture of the case file as it stood in the summer of 2024, assuming that was even possible. I also acknowledge that there are, as Mr Bell says, no contemporaneous notes or correspondence on the issue.

50. It is true that *ex post facto* evidence needs to be scrutinised with particular care. That is, however, necessary mainly where the belated evidence seeks for the first time to provide reasons for an impugned decision, which is not the position here. It therefore all comes down to whether the court is prepared to accept that the Inspector has deposed to seeing the requests on the file at the time he said. That statement is endorsed by a statement of truth. There has been no application for him to be cross-examined.

51. In all the circumstances, the claimant has failed to show why the Inspector's evidence should not be accepted. I do not consider that this evidence, clear as it is, is thrown into any doubt by the the reference in the screenshots to "N Holmes" or by the absence of any record as to the date on which the Inspector reached his decision.

52. The fact that the evidence emerged only in the course of these proceedings is a matter which might be relevant to the issue of costs (although I should emphasise that I have not received any submissions on this).

53. I turn to the claimant's contention that the Inspector's decision to continue with the written representations mode of determination is flawed for want of reasoning.

54. The starting point is the decision by PINS at the early stage of the appeal process to proceed by way of written representations: see paragraphs 13 and 14 above. The third defendants had requested the written representations procedure in the planning appeal form. On 4 April 2024, PINS informed the second defendant that PINS had applied the Criteria in accordance with section 319A of the 1990 Act, as well as representations received. Having done so, it considered the written representations procedure to be appropriate.

55. Paragraph 6.2.3 of the Procedural Guide (paragraph 23 above) makes it plain that it is only the views of the appellant and the local planning authority that must be considered, along with the Criteria for procedure determination, when deciding which form of procedure to follow in the appeal; although PINS is not prevented from considering the views of others. Paragraph 6.2.4 provides that where the choice differs from that of the LPA and the appellant, PINS will explain the reasons for the choice.

56. In the present case, there was no difference between PINS, the second defendant and the third defendants. On 8 April 2024, the second defendant expressly agreed that written representations were appropriate. I agree with the first defendant that this statement from the second defendant is of considerable significance in determining the claimant's section 288 challenge. The second defendant's response has to be seen in the context of its position as the local planning authority and a party to the appeal; and in light of the second defendant's knowledge of the planning history of the Fox and Hounds Inn, particularly the amount of local opposition to the third planning application, evidenced by the more than 200 objections the second defendant had received.

57. The second defendant did not appear at the hearing on 18 November 2025. It is said to have adopted a position of neutrality regarding the present proceedings. The second defendant has, however, filed summary grounds of resistance, settled by counsel, dated 10 February 2025. These grounds highlight the following passage from the Criteria set out at paragraph 24 above:

> "a hearing would be appropriate if:
>
> ...
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> • the case has generated a level of local interest such as to warrant a hearing (Where the proposal has generated significant local interest a hearing or inquiry may need to be considered. In such circumstances the local planning authority should indicate which procedure it considers would be most appropriate taking account of the number of people likely to attend and participate at the event. We will take that advice into account in reaching the decision as to the appropriate procedure)"

58. The summary grounds also highlight paragraph 6.2.6 of the Procedural Guide (paragraph 23 above):

> "We keep our choice of procedure under review throughout the appeal. Subject to notification and procedural requirements, we may change the procedure. We may also, either at the start or at any point throughout the appeal, combine procedures."

59. The summary grounds contend that the requests from the claimant and the Parish Council "fell squarely within the PINS guidance as to when a hearing might be appropriate – level of public participation... In such circumstances, the Guidance clearly anticipates that PINS will seek the views of the planning authority. That appears not to have happened in this appeal." It is also contended that PINS failed to comply with its policy to keep the form of the procedure under review.

60. So far as the last contention is concerned, for the reasons I have given, the Inspector's witness statement answers it. He reviewed the issue of mode, prior to undertaking his site visit.

61. The contention based on the quoted passage from the Criteria is unpersuasive for two reasons. The first sentence of the passage presupposes the operation of a value judgment, that the level of local interest is such as to warrant a hearing. That value judgment must lie with PINS and, subsequently, the Inspector, subject only to *Wednesbury* irrationality. Although the *dicta* in *Westerleigh* and *North Norfolk*, quoted at paragraphs 25 and 26 above, concern the complexity of the issues involved in the case, there can be no principled reason for treating the "substantial public interest" factor any differently.

62. The next sentences in the quoted passage of the Criteria, which are in parentheses, therefore contemplate the involvement of the local authority, not on whether the degree of local interest is such as to warrant a mode other than written representations, but on whether the mode should involve a hearing or a public inquiry.

63. The second reason why the contention is unpersuasive is that, even if the quoted passage from the Criteria means what the second defendant appears to think it means, it takes the second defendant (and the claimant) nowhere. The second defendant knew about the level of local interest when it agreed that the appeal could be determined by means of the written representations procedure. So far as that aspect was concerned, the fact that the claimant and the Parish Council subsequently asked for a hearing or inquiry added nothing. In this regard, it is noteworthy that the second defendant's summary grounds do not assert that, in the light of the letters from the claimant and the Parish Council, the second defendant now considers that the appeal ought not to have been decided by means of written representations.

64. In addition to the level of local interest, the Parish Council's letter of 22 April 2024 also submitted that the viability of the pub was the subject of "active dispute, indicating that evidence should be tested by formal questioning." The claimant's letter of 24 April 2024 suggested that "hearing evidence from experts and proprietors within the leisure industry", amongst others, "would best serve the Inspector in this appeal." The second defendant's summary grounds do not, however, rely upon such concerns in seeking to criticise the alleged failure to consult it about the mode of determination. That is unsurprising. Although the second defendant eventually resolved to refuse the fourth planning application on viability grounds, this was contrary to the advice of the Planning Officer's report, which concluded the pub was not viable.

65. The second defendant's misconceived complaints about alleged failures in process constitute relevant background to the aspect of the claimant's challenge under ground 1 which asserts a failure on the part of the Inspector to give reasons for his decision to continue with the appeal by way of written representations.

66. Mr Bell accepts that there is no statutory duty to give reasons under section 319A for proceeding by way of written representations. It is also the position that there is no obligation founded in policy. As we have seen, paragraph 6.2.4 of the Procedural Guide requires reasons to be given for choosing a particular procedure, only where PINS's choice differs from that of the LPA or the appellant. That limitation is understandable. The appellant and the local planning authority are the parties to the appeal.

67. The claimant's case on lack of reasons has, therefore, to be advanced on the basis that the circumstances engaged a common law duty to give reasons for continuing with the written representations mode.

68. There is no general statutory duty to give reasons for the grant of planning permission. In *Oakley* (paragraph 41 above), the issue was whether a duty arose on a Planning Officer to give reasons for the exercise by him of a delegated power from the local planning committee, to grant planning permission for a football stadium. Two members of the court held that regulations required reasons to be given in such a case of delegation. The court was, however, unanimous in holding that the common law duty of fairness gave rise to a duty on the committee to give reasons for granting planning permission for such a development in the Green Belt, which was not consistent with planning policy and which would have an adverse effect on the countryside.

69. At paragraph 58, Elias LJ highlighted the need to protect areas of outstanding natural beauty, the Green Belt and listed buildings as requiring "strong reasons, and sometimes very exceptional reasons ... to justify interfering with them... in my judgment the common law would be failing in its duty if it were to deny to parties who have such a close and substantial interest in the decision the right to know why that decision had been taken." Part of the reason was that understanding why the decision in such a case had been taken "might enable them to be satisfied that the decision was lawfully made and to challenge it if they believe that it was not." But it was also "because as citizens they have a legitimate interest in knowing how important decisions affecting the quality of their lives have been reached."

70. At paragraph 79, Sales LJ held that one factor capable of generating an obligation to provide reasons was "Where the public interest in ensuring that the relevant decision-maker has considered matters properly is especially pressing, as in cases of grant of planning permission as a departure from the development plan or in cases of grant of planning permission as a departure from the usual protective policy in respect of the Green Belt..." For Sales LJ, "the foundation for the identification of a duty to give reasons for the decision of the council in this case is the fact that the decision to grant planning permission appeared to contradict the local development plan and appeared to subvert the usual pressing policy concern that the Green Belt be protected (I think either of these factors alone would be sufficient)..." (paragraph 80).

71. Some months after *Oakley*, the Supreme Court gave judgment in *R (CPRE Kent) v Dover District Council* [2017] UKSC 79; [2018] 1 WLR 108. The planning application in that case involved an extensive residential development, parts of which lay within an area of outstanding natural beauty. The application comprised development likely to have significant effects on the environment. Decision-makers were therefore prohibited by the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 from

granting planning permission unless they took required environmental information into account and stated they had done so. The Regulations also required the local planning authority to make available for public inspection the main reasons and consideration on which the decision was based.

72. The local planning committee resolved to grant permission, without accepting the conditions that the planning officer recommended. A challenge was brought alleging inadequacy of reasons. The Supreme Court held that the 2011 Regulations required the giving of reasons for the grant of planning permission, which it had failed to do.

73. In *obiter* findings delivered *per curiam*, Lord Carnwath, giving the sole judgment, held that although public authorities are not under a general common law duty to give reasons for their decision, fairness may in some circumstances require it even in a statutory context in which no express duty is imposed (paragraph 51). At paragraph 52, he observed that, in the planning context, a local planning authority generally is under no common law duty to give reasons for the grant of planning permission. Lord Carnwath regarded *Oakley* as reaffirming this general principle, although finding that "a duty did arise in the particular circumstances of that case...".

74. At paragraph 58, Lord Carnwath noted academic commentary on Oakley, which was concerned that:

> "it leaves some uncertainty about what particular factors are sufficient to trigger the common law duty, and indeed as to the justification for limiting the duty at all... The answer to the latter must lie in the relationship of the common law and the statutory framework. The court should respect the exercise of Ministerial discretion, in designating certain categories of decision for a formal statement of reasons. But it may also take account of the fact that the present system of rules has developed piecemeal and without any apparent pretence of overall coherence. It is appropriate for the common law to fill the gaps, but to limit that intervention to circumstances where the legal policy reasons are particularly strong.
>
> 59. As to the charge of uncertainty, it would be wrong to be over-prescriptive, in a judgment on a single case and a single set of policies. However it should not be difficult for councils and their officers to identify cases which call for a formulated statement of reasons, beyond the statutory requirements. Typically they will be cases where, as in *Oakley* and the present case, permission has been granted in the face of substantial public opposition and against the advice of officers, for projects which involve major departures from the development plan, or from other policies of recognised importance (such as the "specific policies" identified in the NPPF .... Such decisions call for public explanation, not just because of their immediate impact; but also because, as Lord Bridge pointed out ... they are likely to have lasting relevance for the application of policy in future cases."

75. In *R (Save Britain's Heritage) v SSCLG* [2018] EWCA Civ 2137; [2019] 1 WLR 929, the issue was whether the Secretary of State had erred in failing to give reasons for deciding not to exercise his power under section 77 of the 1990 Act to "call in" a planning application for determination by him, rather than by the local planning authority. The

court held that ministerial statements in Parliament constituted a clear policy that reasons would be given in such situations; and that the policy had not been followed in the present case.

76. The court held, however, that there was no common law duty to give reasons for what it characterised as a procedural decision. Coulson LJ held:

> "19. It is convenient to start by considering this question from first principles, absent any reference to statute or case law. Is it necessary, in order to deal fairly with requests under s.77, for the SoS to give reasons when he decides not to call in an application? As a matter of common sense, it seems to me that the answer to that question must be No. A decision under s.77 is not a substantive decision. It is not one that goes to the detail of the application, and its merits or demerits from a planning perspective. It does not affect anyone's substantive rights. It is not directly determinative of the planning application itself. Instead, it is a procedural decision going to the straightforward question of who should deal with the planning application: the LPA, or the SoS? It would be unnecessary and burdensome if the SoS had to give reasons every time he decided not to call in an application under s.77, particularly in circumstances where that is the default position which is departed from only rarely: as the WMS made plain, the policy has long been that most planning applications should be dealt with at a local level.
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> ...
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> 26. Furthermore, I do not consider that Mr Harwood QC, on behalf of SAVE, derives any assistance from those cases concerned, not with s.77, but with substantive planning decisions. *R v Aylesbury Vale DC ex parte Chaplin* [1998] 76 P&CR 207 is authority for the proposition that there is no general duty to provide reasons in relation to substantive decisions in planning cases. That general proposition was not ultimately modified or altered by the Court of Appeal in *R (Oakley)*, although Elias LJ had clearly been tempted to do so. At [76] Sales LJ noted that the court should be wary of imposing a general duty where Parliament has not done so, and went on:
>
> > "In my view, the common law should only identify a duty to give reasons where there is a sufficient accumulation of reasons of particular force and weight in relation to the particular circumstances of an individual case."
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> 27. Mr Harwood QC placed particular reliance on the recent decision of the Supreme Court in *CPRE*. However, I do not consider that the part of the judgment of Lord Carnwath JSC to which we were taken (which was in any event *obiter*, because it was found, in that case, that the Environmental Impact Assessment Regulations imposed an obligation to give reasons in any event) is of any real assistance to SAVE in the present case. The principles to be derived from that part of Lord Carnwath's judgment can perhaps be summarised as follows:
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> (a) Public authorities are under no general common law duty to give reasons for their decisions [51];
>
> (b) Fairness may in some circumstances require reasons to be given, even where there is no express statutory duty [51], [54];

(c) In the planning context, an LPA is generally under no common law duty to give reasons for the grant of planning permission [52], although special circumstances may require it [52], [57];

(d) The common law principle of open justice or transparency also applies to whether reasons are required to be given for a planning decision [55];

(e) In deciding whether reasons should be given, the court should "respect the exercise of Ministerial discretion, in designating certain categories of decision for a formal statement of reasons" but recognise that "the present system of rules has developed piecemeal and without any apparent pretence of overall coherence" [58].

(f) "It is appropriate for the common law to fill the gaps [and require reasons to be given] but to limit that intervention to circumstances where the legal policy reasons are particularly strong" [58].

28. On an application of those principles to a decision under s.77, I am in no doubt that there was no requirement to give reasons. There are no good legal policy reasons (let alone strong ones) which require reasons to be given for a decision which is procedural only, and which is not directly determinative of the relevant parties' rights and obligations."

77. Whilst concurring, Singh LJ said he "would not necessarily accept the apparent breadth of the principle ... that the common law would never impose a duty to give reasons for the exercise of a discretion simply because it can be characterised as a 'procedural' discretion." Although agreeing that the common law did not impose a duty to give reasons in the particular context under consideration, "I would prefer to leave the question of whether there can ever be such a duty in cases of procedural discretion to be decided in each particular context where the issue may arise in the future" (paragraph 52).

78. The judgment of Coulson LJ in *Save Britain's Heritage* points strongly against the common law imposing a duty to give reasons why a particular mode of proceeding in a section 78 appeal is being maintained. The policy scheme contained in the Procedural Guide represents a considered and plainly rational approach to the issue of reasons in this context. The initial decision will require reasons only where the choice differs from the appellant and the local planning authority (6.2.4), whilst the procedure may be changed during the course of the proceedings "subject to notification and procedural requirements" (6.2.6).

79. Even applying the more cautious approach of Singh LJ, the factual situation would need to be compelling before the common law could be invoked in a purely procedural context such as the present. Taking the claimant's case at its highest, one would look for guidance in Lord Carnwath's judgment in *CPRE* and Elias LJ's in *Oakley.* The facts of the present case are, however, far removed from those of those cases. The decision to continue with the written representations process was not made in the face of substantial opposition. It was supported by the parties to the appeal. Opposition to continuing with written representations came only from the Parish Council and the claimant. Whilst I accept that the claimant considers it is representative of persons who wish to save the pub and whilst the Parish Council may regard itself as speaking on behalf of such persons, it is not possible to infer that all those who objected to the third planning application were thereby

to be taken as objecting to the mode by which the appeal would be determined. Even if one looks beyond the procedural decision, the development which was the subject of the appeal in the present case lacks the characteristics of those in *Oakley* and *CPRE*. It was not major development, where permission was granted in the face of planning policy. Important though it may have been to those in the locality who wished to see the pub use continue, and although it involved a listed building, the proposed development was small-scale. Applying Lord Carnwath's analysis, there were no "particularly strong" legal or policy reasons to warrant the imposition of a common law duty. On the contrary, I agree with the first defendant that to require reasons to be given for procedural decisions in such cases (where the legislative and policy scheme is silent) would place an unreasonable burden on Inspectors.

80. I have found the second defendant's assertions regarding alleged process failure to be without merit, for the reasons given at paragraphs 60 to 64 above. Nor was there any other failure of process by PINS or the Inspector. The latter's witness statement says that he considered the requests of the Parish Council and the claimant as to mode. The Parish Council's request raised the issue of testing the evidence on viability. The Inspector's witness statement also says (at paragraph 8) that he considered the Parish Council's submission of 4 May 2024, which appended a document concerning two offers to buy the pub. The Inspector was therefore well aware that the Parish Council was raising the issue of the pub's viability and arguing that this made a hearing or inquiry appropriate. In the exercise of his judgment, he decided that the written representations procedure was nevertheless appropriate. I shall have more to say about this matter when addressing ground 2. So far as the present ground is concerned, the Inspector was fully entitled to conclude that he could deal with viability on the basis of the written representations made to him. As the first defendant submits, there is nothing in the Guidance or the Criteria that suggests questions of viability of a business cannot be determined by way of written representations. That third parties might be contending to the contrary did not mean the Inspector fell under a legal obligation to provide reasons for adhering to the written representations mode. Nor did the fact that the letters from the Parish Council and the claimant asked for reasons, if the requests were denied; and that there was a threat of judicial review. To hold otherwise, irrespective of context, would place an unwarranted burden on Inspectors.

81. Standing back, it cannot be successfully maintained that there was something so untoward about the procedural or process aspects of the present case as to require the imposition of a common law duty to give reasons.

82. I have referred to the exercise of the Inspector's judgment. At the hearing, there was disagreement over the relevance in the present case of the well-known dicta of Lindblom LJ in *St Modwen* (see paragraph 42 above); in particular, the lack of a legal requirement to address specifically each and every issue in a decision letter. I find that there is merit in the first defendant's invocation of *St Modwen*. Although the impugned decision is procedural, it is difficult to see a principled reason for adopting a different approach to the intensity of scrutiny which the courts should apply to procedural as opposed to substantive planning decisions. Indeed, in its response to the first defendant's application to amend the detailed grounds of defence, the claimant says of its whole challenge that "the Claimant has not specifically aimed its challenge at any direction to refuse ... the ... application to revisit the mode of determination ... The challenge is brought to the substantive Decision...". To demand a more intensive stance in the case of procedural planning decisions (which is the

logical result of the claimant's *St Modwen* submission) would not only be impossible to justify in its own terms; it also risks turning the approach of the court in *Save Britain's Heritage* on its head.

83. Mr Bell points to the facts of *Westerleigh* as showing that PINS and its Inspectors can and do communicate their reasons for maintaining a decision to proceed by way of written representations (paragraphs 9 to 17 of the judgment). He also relies on *Omer Riza v SSCLG and another* [2014] EWHC 909 (Admin). In that case, the appellant requested a hearing and received a reply which gave reasons why a hearing was not considered appropriate (paragraph 15 of the judgment). The appellant's complaint about unfairness was rejected on the basis that he had not given any reasons for considering that a hearing was appropriate.

84. I do not consider that either case assists the claimant. The facts of *Omer Riza* were quite different. The appellant was told the reason why PINS did not agree with his request. *Omer Riza* shows the process operating as it should. *Westerleigh* was a case involving the proposed creation of a crematorium, involving correspondence between the local MP and the Chief Executive of PINS (paragraph 11). What happened in that case is not a reliable guide to the existence of a duty to give reasons in the present case. The challenge in *Westerleigh* was mounted on the basis of alleged irrationality and unfairness in the decision to proceed by way of written representations. It is also relevant to observe that at paragraph 31, Wyn Williams J said:

> "31. I should just record that the decisions taken by the Inspectorate about the mode of appeal were not communicated to the Claimant (or other objectors) save for the letter written to the local member of Parliament. It has not been suggested, however, that this lack of communication rendered the procedure unfair, no doubt for eminently sensible reasons."

85. This brings me to the submission recorded at paragraph 43 above, that the written representations procedure keeps third parties largely in the dark about the process before the decision in the appeal is issued. That, however, is inherent in the procedure that has been ordained for written representations under the statutory and policy scheme. The appellant and the local planning authority are at centre stage. It is not for this court to interfere with that procedure and render it more burdensome, by calling down a duty to give reasons, regardless of the particular circumstances.

86. For these reasons, ground 1 fails. There is no need to rely upon *Simplex*.

Ground 2 (failure to take account of material considerations)

87. The claimant submits that the Inspector failed to take account of the submissions and evidence of the Parish Council in its submission of 4 May 2024 regarding the viability of the pub. There were offers to purchase it as a going concern. Paragraph 22 of the decision letter, however, refers expressly to the Parish Council's submission. In paragraph 22, the Inspector referred to the Everard Cole report, the assumptions behind whose conclusions he did not find realistic; such as finding cut-priced supplies, accepting no minimum monthly wages and having to be very innovative. I acknowledge that paragraph 22 does not refer expressly to paragraph 19 of the Parish Council's submission. This refers to two

offers to buy the pub as a going concern being made in March 2024 in the respective sums of £490,000 and £425,000. It is, however, trite that an Inspector's report does not need to reference expressly to each and every point raised (*St Modwen*).

88. In this regard, it is also important to note that, in making his decision, the Inspector had before him the Officer's Report in respect of the fourth planning application: paragraph 21 of the decision letter. I have referred to this at paragraphs 8 to 11 above. The Planning Officer advised the second defendant's planning committee that planning permission should be granted. The Planning Officer conducted a detailed examination of the evidence and found the pub business not to be viable. He reached this conclusion, having regard to the representations of the Parish Council. Together with those representations, there was attached an addendum letter dated 3 May 2024 from Morgan & Clarke. This referred to the recent offers of £425,000 and £490,000. As regards these offers, the Officer concluded "it appears that only one experienced pub operator submitted an offer to purchase the Fox & Hounds, which was well below the asking price." Earlier in the Officer's report, he stated that the planning agent of the third defendants advised that the asking price was £550,000, "which was already reduced in comparison with the marketing conducted by the previous owners at £675,000, and the selling fees would further reduce it...". In saying what he did about the asking price, the officer was specifically aware of the contention of the Parish Council that, amongst other things, the sale price had not been set at a realistic level.

89. We see from the attachment to the Parish Council's objection submitted in respect of the appeal to the Inspector that the offer from the "experienced pub operator" was £425,000; and the offer of £490,000 came from the proprietor of a coffee shop in Moreton in Marsh.

90. The 2024 offers were, therefore, discounted by the Planning Officer, whose report was referenced by the Inspector and who can therefore be taken to have been fully aware of its contents. As a perusal of the Officer's report shows, quite apart from examining the offers, he conducted a careful analysis of the various consultants' reports. He concluded that great weight should be attached to "the independent and impartial advice received by Everard Cole". They had been instructed by the second defendant to report on viability. They concluded the business was not viable. At paragraph 22 of his decision, the Inspector likewise placed weight on the work of Everard Cole. He found that the assumptions in the report of Morgan and Clarke, commissioned by the Parish Council, were not realistic.

91. The Inspector was plainly aware that the second defendant's planning committee had refused the fourth application on the basis of asserted continued viability. At paragraph 3 of his report, the Inspector noted how the second defendant and the Parish Council "remarked during the appeal, albeit belatedly, that another application for a residential change of use for the appeal building was refused on [a viability] ground.". Upon becoming aware of the refusal, the Inspector sought further comments from the third defendants, who provided him with the Officer's Report.

92. The claimant submits that, at this point, the Inspector should have sought the views of the claimant and the Parish Council. The claimant could, it is said, have commented on the weight to be placed on the 2024 offers to purchase the pub. I agree with Mr Fullbrook that this submission has no basis in authority or relevant procedural guidance. In any event, the claimant was aware of the fourth refusal and could have sought to make submissions on it to the Inspector, if it had wished.

93. For these reasons, ground 2 fails. There is no need to rely on *Simplex*.

Decision

94. The claim fails. I invite the parties to agree, if possible, the resulting order.