Neutral Citation Number: [2025] EWHC 2630 (Admin)

Case No: AC-2024-MAN-000347

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

Manchester Civil Justice Centre,
1 Bridge Street West, Manchester, M60 9DJ

Date: 15/10/2025

Before :

MR JUSTICE MOULD

- -

Between :

Friends of the Lake District	**Claimant**
- and -	
Lake District National Park Authority	**Defendant**
-and –	
Burlington Slate Limited	
	Interested Party

- -
- -

Brendan Brett (instructed by **Sharpe Pritchard LLP**) for the **Claimant**
Ned Westaway (instructed by **Solicitor to Lake District National Park Authority**) for the **Defendant**
The Interested Party did not appear and was not represented

Hearing dates: 30 April-1 May 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on Wednesday 15 October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE MOULD :

Introduction

1. This is an application for judicial review of the decision by the Defendant, the Lake District National Park Authority, to grant planning permission subject to conditions for the use of slate caverns at Elterwater Quarry for heritage tourism **["the planning permission"]**. The full description of development authorised by the planning permission **["the development"]** is –

   "The use of Elterwater quarry slate caverns for heritage tourism; the partial re-use of existing former saw sheds for visitor facilities, an indoor interpretation area and electric bike charging facilities; works to create an outdoor natural history trail with permissive pedestrian access and vehicle parking; and, a landscaping scheme".

2. The Interested Party submitted its application for planning permission for the development **["the planning application"]** on 20 December 2023. The Defendant's Development Control Committee **["the Committee"]** resolved to grant the planning permission at their meeting held on 1 May 2024. The planning permission was issued on 3 May 2024.

3. Elterwater Quarry **["the quarry"]** is a working quarry operated by the Interested Party. The quarry is located to the south-west of the village of Elterwater in the Langdale Valley. Access to the quarry from the village is gained via a single track road, also a bridleway.

4. The quarry is a long-established minerals site with a complex of underground caverns, quarry voids, benches, faces and waste tips. The development would involve the introduction of a fixed-line route connecting viewing platforms with a cavern, using zip-wires to provide access to viewpoints and features of interest to visitors. Existing buildings within the quarry site would be adapted for use as part of the tourist attraction. There would be an outdoor heritage interpretation area. Car and coach parking would be provided, with associated landscaping. A permissive path would be created within the quarry site to a viewpoint. Meanwhile, the site would continue to be used for quarrying operations.

5. The quarry, the village and the surrounding area including the Langdale Valley are situated at the heart of the Lake District National Park. The whole area of the Lake District National Park was inscribed by UNESCO as a World Heritage Site in 2017.

6. The Claimant is a charitable and membership organisation which promotes the protection and conservation of the landscape and natural beauty of the Lake District and the county of Cumbria as a whole. On 31 January 2024, the Claimant wrote to the Defendant raising extensive objections to the Interested Party's planning application. On 14 May 2024, the Claimant brought this claim for judicial review of the grant of the planning permission.

The grounds of challenge

7. On 25 July 2024, Lang J gave permission for the claim to proceed on the following grounds –

(1) The Defendant's decision was vitiated by the legally erroneous approach of a senior member of the Committee, Ms Tiffany Hunt MBE, to the application of the *Sandford* principle, which is given legal effect by section 11A(1A) of the National Parks and Access to the Countryside Act 1949 **["the 1949 Act"]**.

(2) In the report, the Defendant's Committee were given materially misleading advice by the planning officer in relation to the efficacy of condition 9 imposed on the planning permission and the ability of the Defendant to enforce the measures proposed in the Interested Party's submitted travel plan. As a result, the Defendant's Committee took account of an immaterial consideration when they resolved to grant planning permission.

(3) The Defendant's Committee based their decision to grant planning permission on advice given by the planning officer that no harm to the landscape would result from the increased traffic on local roads generated by the development. That advice was irrational, founded upon a misinterpretation of relevant planning policy and failed to take account of a material consideration.

The application to amend.

8. On 8 April 2025, the Claimant filed an application notice seeking permission to amend its claim by introducing a further ground of challenge–

(1A) The Defendant erred in law in its interpretation and application of the *Sandford* principle.

9. That application is opposed by the Defendant.

Legislative and policy context

Planning decision taking

10. The Defendant is the local planning authority for the area of the Lake District National Park. The Defendant has the function of determining applications for planning permission to develop land situated within its administrative area.

11. Section 70 of the Town and Country Planning Act 1990 **["the 1990 Act"]** provides for the determination of applications for planning permission. Section 70(1) and (2) provides as follows (omitting certain passages):

"(1) Where an application is made to a local planning authority for planning permission –

(a) … they may grant planning permission, either unconditionally or subject to such conditions as they think fit; or

(b)they may refuse planning permission …

(2) In dealing with an application for planning permission … the authority shall have regard to (a) the provisions of the development plan, so far as material to the application …; and (c) any other material considerations".

12. Section 38(6) of the Planning and Compulsory Purchase Act 2004 **["the 2004 Act"]** provides:

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".

National Parks – purposes and duties

13. National Parks are extensive tracts of country in England which have been designated in accordance with section 5 of the 1949 Act in recognition of their natural beauty and the opportunities which they afford for open-air recreation, having regard to their character and to their position in relation to centres of population. Section 5 of the 1949 Act states –

"5(1) The provisions of this Part of this Act shall have effect for the purpose -

(a) of conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified in the next following subsection; and

(b) of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.

(2) The said areas are those extensive tracts of country in England ... as to which it appears to Natural England that by reason of -

(a) their natural beauty, and

(b) the opportunities they afford for open-air recreation, having regard both to their character and to their position in relation to centres of population,

it is especially desirable that the necessary measures shall be taken for the purposes mentioned in the last foregoing subsection.

(3) The said areas, as for the time being designated by order made by Natural England and submitted to and confirmed by the Minister, shall be as known as, and are hereinafter referred to as, National Parks".

14. Section 11A of the 1949 Act imposes duties in relation to the purposes for which National Parks are designated, as specified in section 5(1) of that Act. Sub-sections 11A(1) and (1A) state -

"11A(1) A National Park authority, in pursuing in relation to the National Park the purposes specified in subsection (1) of section five of this Act, shall seek to foster the economic and social well-being of local communities within the National Park ... and shall for that purpose cooperate with local authorities and public bodies whose functions include the promotion of economic or social development within the area of the National Park.

(1A) In exercising or performing any functions in relation to, or so as to affect, land in any National Park in England, a relevant authority other than a devolved Welsh authority must seek to further the purposes specified in section 5(1) and if it appears

that there is a conflict between those purposes, must attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park".

15. As a National Park Authority, the Defendant is a "relevant authority" for the purposes of sub-section 11A(1A) of the 1949 Act: see sub-sections 11A(3) and (4) of the Act. In determining the Interested Party's planning application for the development, the Defendant was performing a function in relation to and so as to affect land in a National Park in England and so subject to the duty imposed by section 11A(1A) of the 1949 Act.

The Sandford principle

16. In providing that in cases of apparent conflict between the two statutory purposes, a relevant authority must attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park, sub-section 11A(1A) of the 1949 Act gives statutory effect to the *Sandford* principle. The *Sandford* principle derives from a report in 1974 of the National Park Policies Review Committee chaired by Lord Sandford, which included the following advice –

"2.15 The first purpose of national parks, as stated by Dower and by Parliament - the preservation and enhancement of natural beauty - seems to us to remain entirely valid and appropriate. The second purpose - the promotion of public enjoyment - however, needs to be re-interpreted and qualified because it is now evident that excessive or unsuitable use may destroy the very qualities that attract people to the parks. We have no doubt that where the conflict between the two purposes, which has always been inherent, becomes acute, the first one must prevail in order that the beauty and ecological qualities of the national parks may be maintained".

17. Statutory effect was first given to the *Sandford* principle by section 62 of the Environment Act 1995, which for that purpose enacted and inserted sub-section 11A(2) into the 1949 Act. Sub-section 11A(2) has since been replaced in its application to National Parks in England by section 11A(1A) of the 1949 Act (enacted and inserted by section 245 of the Levelling-up and Regeneration Act 2023). The terms in which the *Sandford* principle is given statutory effect are, however, unchanged.

18. In R(Stubbs) v Lake District National Park Authority [2021] PTSR 261 an issue arose as to the nature or degree of conflict between the two statutory purposes which was necessary to bring the *Sandford* principle into play. At [39] Dove J said –

"In my view the starting point for the consideration of this issue must be the statutory language of section 11A(2), read in the context of the statutory framework within which it sits. It is clear from section 5 of the 1949 Act that the two statutory purposes are set out on an equal footing, and are both objectives which are to be pursued in the management and operation of National Parks and the exercise of the powers contained in part II of the 1949 Act. On the face of section 5, therefore, there is no justification to distinguish between the two purposes. It is clear to me that section 11A(2) is included within the 1949 Act as a means of resolving situations where it is no longer possible to treat both of the purposes equally, and not possible through management or stewardship to satisfactorily accommodate both purposes. I accept the submission

made by Mr Westaway on behalf of the defendant, that the use of the word "conflict" in section 11A(2) is not to be understood as referring to any conflict or friction between the two purposes set out in section 5. Those purposes will very often be at odds with each other in the absence of any intervention to resolve them (such as the erosion caused to popular paths by walkers, cyclists or horse riders). Thus, something more than simply conflict which is not managed must arise for the provisions of section 11A(2) to be triggered. In truth, it does not appear that this proposition is controversial. Where the National Park Authority judges that the conflict can no longer be satisfactorily mediated through management or stewardship then, in circumstances where it is judged that both purposes cannot be accommodated and the National Park Authority concludes that it must make a choice, section 11A(2) makes clear that it is the first of the purposes which is to be afforded greater weight. Whether this is described as a conflict which is acute, or unresolvable, or irreconcilable is a matter of semantics. However, each of these adjectives properly describes the point at which section 11A(2) comes into play, in order to resolve a conflict which cannot be properly accommodated through management measures when greater weight then has to attach in the decision-taking process to the first purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the national park".

19. At [40], Dove J referred to the judgment of Holgate J in R(Harris) v Broads Authority [2017] 1 WLR 567 and said –

"In my view Holgate J was correct when he observed that the provisions of section 11A(2) impose "relatively broad duties, which are largely dependent upon the value judgements made by a National Park Authority from time to time". It is clear that broad and often subjective judgements will need to be formed by a National Park Authority in relation to how the best interests of both of the purposes set out in section 5 are to be served by the decisions which it makes. In addition to these judgments, the question of whether or not there is a conflict which engages section 11A(2) is a further exercise of judgment in relation to the broad duties imposed on the National Park Authority. What is clear from the language of the statute, and the way in which section 5 and section 11A(2) of the 1949 Act interrelate, is that section 11A(2) arises in circumstances where the National Park Authority reaches the judgment that a conflict between the two purposes is such that it cannot be resolved or reconciled and the preference for the first statutory purpose under section 5 of the 1949 Act must arise. Section 11A(2) is a necessary means of breaking the deadlock where the interests of the two purposes cannot be mediated through a management or stewardship solution".

Judicial review of local planning authority decision taking

20. The principles upon which the court acts when faced with an allegation that a planning committee has been misled by advice provided by officers are both well settled and well known. They are summarised by Lindblom LJ in R (Mansell) v Tonbridge and Malling BC [2019] PTSR 1452 at [42] (omitting some cross references to other cases) -

"The principles on which the court will act when criticism is made of a planning officer's report to committee are well settled. To summarize the law as it stands:

(1) The essential principles are as stated by the Court of Appeal in R. v Selby District Council, ex parte Oxton Farms [1997] EGCS 60 (see, in particular, the judgment of Judge L.J., as he then was). They have since been confirmed several times by this court, notably by Sullivan L.J. in R. (on the application of Siraj) v Kirklees Metropolitan Borough Council [2010] EWCA Civ 1286, at paragraph 19, and applied in many cases at first instance ….

(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 …. 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 …. 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 …, or has plainly misdirected the members as to the meaning of a relevant policy …. 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 …. But unless there is some distinct and material defect in the officer's advice, the court will not interfere".

Lake District National Park Local Plan

21. The Defendant adopted the Lake District National Park Local Plan entitled *"Living Lakes Your Local Plan"* in May 2021 **["the Local Plan"]**. Policy 01 provides the land use strategy which founds the Local Plan. It incorporates the *Sandford* principle, as a matter of policy. It states –

"The extraordinary harmony and beauty of the Lake District landscape and its Special Qualities, including the attributes of Outstanding Universal Value, will be conserved and enhanced.

We will achieve this by supporting development proposals which are consistent with National Park Purposes and Duty. If it appears that there is a conflict between National Park purposes, we shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the Lake District National Park.

All development proposals should protect or enhance the authenticity, integrity and significance of the Lake District".

22. Policy 05 of the Local Plan states the Defendant's policy for protecting the *"spectacular landscape"* of the Lake District National Park –

"We will conserve and enhance the extraordinary beauty and harmony of the Lake District landscape, its Special Qualities and attributes of Outstanding Universal Value.

We will achieve this by supporting development:

- *that ensures the highest level of protection is given to the landscape, and*
- *where the type, design, scale and level of activity maintains local distinctiveness, sense of place, and where appropriate, tranquillity.*

Decisions will be guided by the Lake District Landscape Character Assessment recognising the distinctive characteristics identified in the Landscape Character Types and Areas of Distinctive Character, the World Heritage Site Nomination Document and the Historic Landscape Characterisation.

We will use development opportunities to reduce or remove existing landscape detractors".

23. Paragraph 3.05.04 of the Local Plan provides the following explanation of the policy concept of tranquillity –

"Tranquillity is a quality of calm that people experience in places full of sights and sounds of nature, and National Parks are viewed as one of the best places to gain this experience. Tranquillity can be damaged by the intrusive sights and sounds of man-made structures such as new roads, poorly designed lighting and power lines".

24. Paragraph 3.05.05 provides the following guidance on the implementation of policy 05 –

"This policy will implement the intentions of the Principles of development by ensuring the spectacular landscape of the Lake District is not compromised by new development. The tranquillity of the countryside should be valued and protected from poor development decisions. New developments may create additional noise, particularly in the context of road traffic, industrial equipment and recreational activities, as well as during the construction phase, and should be considered when taking decisions on new development proposals".

25. Policy 18 of the Local Plan expresses support for sustainable tourism –

"We will support proposals which deliver a high quality, sustainable tourism experience for the diverse range of visitors to the Lake District, and ensure proposals benefit our local communities and businesses

To achieve this we will support proposals which:

- *enhance and improve the quality of visitor experiences; or*

- *increase the length of stay of overnight visitors; or*

- *encourage year round sustainable tourism.*

Sustainable tourism proposals will be supported where they:

- *are within or well related to the settlement form of a Rural Service Centre (Policy 19), or*

- *rely upon on a geographically fixed resource which justifies the development; or*

- *are located within or adjacent to an existing visitor attraction or accommodation site".*

26. Paragraph 3.18.05 provides the following guidance on the implementation of policy 18 –

"The policy aims to locate new tourism development in places which offer a choice of transport options for visitors and employees. The transport element of proposals will be assessed against Policy 21: Sustainable access and travel. Tourism proposals will be required to submit a Transport Assessment or Transport Statement, and Travel Plans, where appropriate".

27. Policy 21 of the Local Plan provides the Defendant's policy on sustainable access and travel. It states (in part) –

"We will support the development of sustainable transport infrastructure to broaden and encourage use of sustainable travel modes for visitors thereby reducing the need to travel by private vehicle.

We will achieve this by supporting:

- *proposals for sustainable transport infrastructure and facilities which improve the connectivity of existing and new sustainable transport infrastructure, services and networks; or*

- *proposals which improve water based transport through the provision of public jetties and connecting infrastructure; or*

- *proposals that enable deployment of new transport and infrastructure technologies in travel corridors; or*

- *proposals that enable the provision of new modes of transport and mobility services".*

28. Paragraph 3.21.01 states that the Defendant's objective is to reduce the need for visitors to travel by private vehicles within and through the Lake District and to promote the development and use of sustainable transport and travel choices. Paragraph 3.21.05 states that the number of visitors to the National Park is expected to continue to increase; and that to encourage a corresponding increase in traffic and parking would impact negatively on residents, visitors and the landscape of the National Park.

Factual background

The previous planning application

29. On 13 September 2023 the Defendant refused an earlier planning application made by the Interested Party for essentially the same scheme of development at the quarry. The stated reasons for refusal included the following –

> *"The application estimates that 294 people could visit the attraction each day in peak seasons with commensurate increases in travel to the site. The application fails to demonstrate that the measures proposed promote and increase travel to the site using more sustainable modes of transport are robust and achievable, or that satisfactory alternative measures can be developed, secured and delivered. The application therefore fails to demonstrate that the likely increases in activity by private vehicles travelling to and from the site would represent sustainable tourism which achieves policy objectives for travel and movement. The application further fails to demonstrate that increases in activity as a result of travel would not impact negatively on residents, visitors and the landscape with resultant harm to the extraordinary harmony and beauty of the Lake District landscape and its Special Qualities, including the attributes of Outstanding Universal Value of the English Lake District World Heritage Site. The benefits of the proposal, including the provision of public access to the caverns, heritage interpretation and the creation of jobs, are not of sufficient weight to outweigh the harm identified".*

30. The Interested Party sought to address and overcome those reasons for refusal in the revised traffic and transport planning proposals submitted in support of the planning application. In particular, the planning application was supported by a revised Travel Plan, a Travel Plan Commitment Statement and a revised Visitor Management Plan.

The Claimant's objections to the development

31. The Claimant submitted extensive written representations to the Defendant raising objections to both planning applications.

32. In their letter of 24 February 2023 commenting on the earlier planning application, the Claimant expressed their deep concerns about several elements of this proposal. Those concerns included traffic, vehicle and visitor impacts on the tranquillity and rural character of the area, conflicts with net zero commitments set at national, Cumbrian and Lake District levels and the stated aims of the Lake District National Park Management Plan relating to sustainable travel. In particular, the Claimant raised the need significantly to reduce use of the private car as a means of getting to, from and around the National Park. The Claimant's objections included the following points –

> *"Given the landscape characteristics, sensitivities and existing pressures identified and the recommendations of the [Landscape Character Assessment], it is vitally important that any assessment of this proposal on the landscape includes impacts on tranquillity, on the strong rural character of the area and on the sense of remoteness and isolation. All these aspects of the landscape character of this area are highly vulnerable to and would be compromised by increased traffic, parked cars and visitor numbers, noise, lighting and movement, as well as any associated new or upgraded infrastructure such as signage and access points/routes. To avoid significant harm to these landscape*

characteristics it must be ensured that visitor numbers combined with the transport modes used, do not have negative impacts. Without very careful management and very innovative, effective means of controlling traffic and transport impacts, this proposal is not acceptable within the parameters of the Local Plan and LDNP Management Plan.

…

There should be no net increase in vehicles/traffic and associated problems; indeed the Traffic Assessment itself (at para. 2.5.2) states "the proposed development should have a robust set of measures to ensure baseline conditions do not worsen". It is unfeasible to suggest that the stated 40-50,000 visitors per year expected to the site will not result in a worsening of traffic and parking issues unless very robust measures are put in place. The proposed measures for encouraging alternatives to the car are unrealistic and are highly unlikely to mitigate the impacts; certainly not to a level anywhere near what would be needed to avoid any worsening of the baseline.

…

As a result of the issues stated above, which render the proposed measures unrealistic, inconvenient and inviable, the vast majority of visitors will still access the attraction by car. 39-49 two-way visitor car movements per day are anticipated in the application based on 40-50,000 visitors per year and 3 people per car. However, it is highly unlikely that this will be spread out evenly across the year meaning that in high season there could be many more than 39-49 extra vehicles arriving in Elterwater every day hoping to find a place to park in order to access the attraction.

This would add significantly to the recognised existing problems with traffic and parking in and around Elterwater, including parking on the Common, caused primarily by high volumes of private vehicles. This in turn will harm the landscape and settlement character, tranquillity and special qualities of the area, as well as the enjoyment of these by visitors and locals alike. The same issues often compromise residents' ability to go about their daily lives.

…

There is a need in this case to apply the Sandford principle in that the proposal is for a tourist attraction. Where there is irreconcilable conflict between the two, the primary National Park purpose to conserve and enhance the natural beauty, wildlife and cultural heritage of the Lake District National Park must be given greater weight than the second purpose of promoting opportunities for public understanding and enjoyment of the special qualities of the Park. Considering the potential harms identified, and specifically the effects of increased traffic and parking on landscape and settlement character and tranquillity in and around Elterwater, without changes and further assurances and information, this proposal would put the second purpose before the first and the proposal is therefore in conflict with policy 01".

33. In their letter of 31 January 2024 setting out their further representations on the planning application, the Claimant stated that they maintained their objection to the development. Their reasons for so doing largely remained as set out in their letter of 24 February 2023, which they asked to be considered alongside their later response. The Claimant also expanded on a number of their points of concern, including –

(1) the unfeasibility of the revised Travel Plan and the impact of the proposal on traffic, travel and vehicle movements;

(2) the impact of additional traffic, vehicles and visitors on the tranquillity and rural character of the area;

(3) the impact on the special qualities of the area, the National Park purposes, and the experience of visitors, who come to the Lake District to understand and enjoy its special qualities;

(4) the impacts on residents and communities;

(5) the nature of the proposal and its impact on English Lake District World Heritage Site attributes, including intangible cultural heritage; and

(6) the resulting conflict with the *Sandford* Principle.

34. The Claimant made the following comments in relation to the impact of the development on landscape character –

"In relation to Policy 05, our views on landscape character impacts remain and our earlier comments on this should be taken into account.

Although touched on in the reasons for refusal in the decision notice for the earlier iteration, having been present at the planning committee meeting at which it was decided, we do not consider that the impacts of additional traffic on landscape character, including tranquillity, were given enough consideration. Rather, the suggestion was made that because the proposal is largely within a quarry cavern and existing building, it could not impact negatively on the landscape.

The proposal directly contradicts several of the characteristics and recommendations set out in the Landscape Character Area, with several aspects of the landscape character of this area cited as being highly vulnerable to increased traffic, parked cars and visitor numbers, noise, lighting and movement, as well as any associated new or upgraded infrastructure such as signage and access points/routes. To avoid significant harm to these landscape characteristics it must be ensured that visitor numbers combined with the transport modes used, do not have negative impacts. Without very careful management and very innovative, effective means of controlling traffic and transport impacts, this proposal is not acceptable within the parameters of the Local Plan and LDNP Management Plan".

35. The Claimant reiterated their contention that the harmful impacts of the development were such that it was in conflict with the *Sandford* principle –

"… it remains our position that this location is not appropriate for this type of development and the proposal does not accord with policies 02, 05, 18, 19 or 21. Issues remain with the principle as well as with aspects of detail.

This includes the impact of the proposal on traffic, travel and vehicle movements, the impact of additional traffic, vehicles and visitors on the tranquillity and rural character of the area and, in turn, the impact of this on the special qualities of the area, the National Park purposes, and the experience of visitors, who come to the Lake District

to understand and enjoy its special qualities. These impacts also affect residents and communities. It also includes the nature of the proposal and impacts of this on English Lake District World Heritage Site attributes, including intangible cultural heritage. As a result of these impacts, the proposal conflicts with the Sandford principle".

The Development Control Committee

36. The planning application was considered by the Defendant's Development Control Committee **["the Committee"]** at its meeting on 1 May 2024. In advance of the meeting, members of the Committee were provided with a very detailed report on the development **["the Report"]** prepared by the area planning officer and agreed by the Defendant's Head of Development Management, Mr Andrew Smith. The officers recommended that planning permission be granted for the development subject to conditions. Draft conditions were included in the Report.

37. The minutes of the Committee's meeting on 1 May 2024 record that having considered the planning application for the development, the Committee decided to approve the application and grant planning permission subject to the imposition of conditions. The motion to approve the planning application was proposed by Ms Hunt and seconded by Ms Vicky Hughes. Three members votes in favour of approval. Three members voted against approval. The planning application was approved on the casting vote of the Chair of the Committee, Mr Mark Kidd. There is a transcript of the Committee's discussion of the planning application, which lasted for well over one hour. I shall need to refer to that transcript when I come to consider ground 1 below.

The planning officer's report

38. Section 2 of the Report described the quarry site, the background and the development proposed by the Interested Party's planning application. Section 3 provided a detailed summary of the points raised in representations received in response to consultation on and publicity for the planning application, including the objections to the development advanced by the Claimant.

39. Historic England raised no objection to the planning application. However, Historic England advised that the Defendant should satisfy itself of the effectiveness of the measures proposed to address traffic impacts, given that traffic generation was an issue raised by the International Council on Monuments and Sites (ICOMOS). ICOMOS is a special advisory body to UNESCO on World Heritage Sites. ICOMOS UK promotes best practice in managing World Heritage Sites in the United Kingdom. In May 2023 ICOMOS UK carried out a technical review of the proposal to create a tourist attraction at the Quarry. The conclusions and recommendations of that technical review were summarised in the Report. ICOMOS UK drew attention to the decision of the UNESCO World Heritage Committee in September 2023 in the light of the adverse findings of the technical review, requesting that the approval process for the development be suspended until an Outstanding Universal Value (OUV) based interpretation strategy had been approved.

40. The local highway authority raised no objection to the planning application. The authority advised that the development will not have a material effect on existing highway conditions.

41. Objections to the planning application were reported under topic headings. The development was said to be contrary to National Park purposes and objectives, and to the *Sandford* principle. The quarry was said to be an inappropriate location for a tourist attraction, the Langdale Valley being renowned for its natural beauty and valued for its peace and tranquillity. The development would harm the landscape and settlement character, the tranquillity and special qualities of the area. The impact of additional traffic, vehicles and visitors would harm those qualities. Detailed and extensive concerns were raised about the traffic impacts and the ineffectiveness of the Travel Plan and proposed transport and traffic commitments.

42. Section 4 of the Report provided a summary of the relevant policies of the Local Plan, of the National Planning Policy Framework **["the Framework"]** and other applicable policy documents. Paragraph 4.8 referred to the statutory purposes and to the *Sandford* principle –

"The Environment Act 1995 sets out two statutory purposes of National Parks:

- *Conserve and enhance the natural beauty, wildlife and cultural heritage.*
- *Promote opportunities for the understanding and enjoyment of the special qualities of national parks by the public.*

It also has a duty in pursuing those purposes:

- *To seek to foster the economic and social well-being of local communities within the National Park…*

Section 62 of the Environment Act 1995 states that if in exercising our functions so as to affect land within the National Park it appears that there is a conflict between purposes, we shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park (The 'Sandford Principle')".

43. Section 5 of the Report comprises of the planning officer's comprehensive assessment of the development. For that purpose, the planning officer identified the main issues. Those issues included –

(1) Whether the proposed tourism use on the site was acceptable as a matter of principle, when assessed against policies about tourism development in the open countryside.

(2) A range of site-specific impacts, including (1) impacts of movement and activity, including travel; (2) impacts on character and appearance, including landscape and visual impacts; and (3) impacts on historic environment and cultural heritage, amongst other matters.

44. In considering whether the development was acceptable in principle, the planning officer advised that the proposed tourist attraction would –

"Provide opportunities for understanding and enjoyment of the special qualities of the National Park (for example geology and geomorphology, rich archaeology and historic

landscape, and long traditions of tourism and outdoor activities). The proposal aligns with and an approval would further the second National Park purpose".

45. She concluded –

"In summary I consider the proposed tourism development would utilise a geographically fixed resource, is capable of operating alongside the quarry use without compromising future mineral extraction and could help to sustain the existing business (although this is not a determining factor in respect of in-principle acceptability). The development can be considered acceptable as a matter of principle, considering relevant policies and the approach of the Development Plan as a whole. This was also the Authority's conclusion in assessing the previous application".

Movement and activity

46. The planning officer then turned to consider and to advise on the site-specific impacts of the development. She considered the traffic and transport impacts of the development under the heading *"Movement and activity"* in paragraphs 5.18 to 5.46 of the Report. She reminded the Committee of the quarry's location and of the surrounding highway network. She referred to the predicted daily numbers of visitors to the development, adjusted for seasonal variation to allow for its operation during the peak season between June and August. The predicted number of visitors over the course of a full year was 50,000 people. During the peak season of 92 days, it was predicted that 294 visitors would visit the quarry per day, with 98 daily two-way vehicle movements, assuming vehicle occupancy of 3 persons per car. The predicted hourly figures were 36 people or an estimated 12 two-way vehicle movements.

47. Having reminded the Committee of the Defendant's reasons for refusing the previous planning application, the planning officer provided details of the Interested Party's revised Travel Plan and the Travel Plan Commitments –

"5.27 In order to overcome these reasons, the applicant has re-addressed their Travel Plan and submitted a Travel Plan Commitment which proposes the following:

• Deployment of a Travel Plan coordinator who will provide ongoing implementation, monitoring, success and evaluation of the Travel Plan measures. They will be responsible for liaising with the slate quarry operator, local community group and the LDNPA to ensure the provisions within the Travel Plan respond to local circumstances.

• Improvements to the sustainable transport

o Provision of a shuttle minibus service at the point of the heritage experience first coming into operation. The minibus will be available to all visitors booking tickets and will follow a route that takes in Windermere train station and selected public car parks. There would be opportunities to extend the route to other centres including Grasmere and Coniston.

o Measures to improve the quarry access road

o Commitment to explore other opportunities for wider sustainable transport network improvements in conjunction with existing operators, for example an improved no. 516 bus service.

o Measures to encourage walking, for example the provision of signage and promotion of routes through the site and surrounding area; and explore options for permissive route across the applicant's private land.

o Measures to encourage cycling, for example the promotion of local cycle routes; signing up to the Cycle2Work scheme; cycle parking, showering and changing facilities on site; promote ebike hire; and provide basic bike repair equipment.

o Improvements to existing Public Rights of Way network.

• On site sustainable transport measures

o The deployment of new sustainable travel infrastructure and technologies including e-bike parking spaces and charging locations, with changing provision and lockers; and on site training for bike repairs.

o Implementing a ticketing strategy.

- *Control the number of visitors driving to Elterwater Quarry Experience and using the available on-site parking allocation. Pricing mechanism would be implemented that would financially reward through ticket pricing customers that have used non-car travel including multi-modal journeys to make all or part of their journey to the Experience, for example via an enhanced bus service or Park and Ride; and Active and Ferry Travel.*

- *The pricing strategy will include necessary checks to ensure participants understand the requirement for verification of sustainable transport modes upon arrival.*

o Measures to encourage car sharing/shared transport such as Liftshare.

o Measures to encourage use of ultra-low and zero emissions vehicles by providing onsite charging facilities; promote off-site car parks with charging infrastructure; and adapting provision for charging facilities in accordance with future demand.

• Sustainable transport awareness

o Providing a welcome pack to employees to positively influence travel behaviour

o Marketing and promotional measures at the point of booking

o Measures to encourage public transport, including season ticket purchase assistance for staff and promoting online journey planning tools.

• Submission of an annual monitoring report to the LDNPA to demonstrate how the Travel Plan has been implemented; measures introduced and actions taken; the

progress of the Travel Plan in achieving targets and identifying any amendments; and a plan for future actions to be implemented".

48. The planning officer said that the Interested Party had submitted a draft planning obligation in the form of a unilateral undertaking, to implement the agreed terms of the Travel Plan. She advised that the unilateral undertaking would be a legally binding document, enforceable by injunction, in which the Interested Party committed to implement the Travel Plan.

49. The planning officer reminded the Committee of policy 21 of the Local Plan and of the policy objective to reduce travel growth by private vehicle through modal shift to sustainable travel. She advised that the policy of the Local Plan in promoting sustainable travel echoed the policy of the Framework. Having drawn attention to the concerns raised by objectors about the utility of the sustainable transport and travel measures proposed in the revised Travel Plan and Travel Plan Commitment statement as an alternative to the private car, the planning officer gave her advice on the acceptability and efficacy of those revised proposals –

"5.33 I consider that the revised travel approach sets out achievable measures that could increase travel to the site using more sustainable modes of transport, particularly with the increased scope set out in the Plan to include a pricing strategy based on travel to the site and the provision of a minibus. I consider that the Travel Plan Commitment statement provides measures that can be addressed and secured through the imposition of a planning condition, requiring a final submission where details, for example in respect of timings and frequency of the private minibus, can be expanded on and secured, and also requiring the submission and monitoring of the plan. The applicant's commitment through the submission of a draft Unilateral Undertaking also, in my opinion, demonstrates both that the Travel Plan is achievable and the applicant's commitment as the applicant is entering a legally binding agreement to implement it.

5.34 Available information also indicates that proposed car park capacity at the attraction would be sufficient that even if all visitors accessed the site by car, they could be accommodated on-site, and therefore the development is not likely to result in displacement which adds to parking pressures in Elterwater or the surrounding area. The operator also indicates that their online booking system can help to control visitors to the site.

5.35 As the proposed cavern explorer has limited capacity it seems likely a majority of users will book ahead to avoid disappointment and wasted journeys, particularly at peak times. The proposed parking arrangements meanwhile are such that when space is available on the activity there will be parking available in the car park, and on occasions when the cavern explorer is fully booked there will be space to safely turn.

5.36 To deter car based travel by visitors who do not book an Automatic Number Plate Recognition (ANPR) barrier is now proposed on the access track between the highway and Fir Bank Cottages. A barrier is also proposed across the entrance to the car park adjacent to the Saw Sheds. The location of the barrier would require its use by users of the Elterwater Experience, quarry traffic, residents of the dwellings at Fir Bank and their visitors. It is not clear on how the barrier would be used, particularly by residents, their visitors and quarry traffic, the estimated frequency of its use given the additional users of the barrier, and whether there would be sufficient space for all these potential

users to be at the barrier and pass. Given these concerns about the barrier in this location, mainly in respect of the impact on the amenity of residential properties, including Fir Bank and Oak Bank, I recommend a condition requiring the submission of a final location of the barrier for approval. There are locations, for example within the car park for the Elterwater Experience, where an ANPR barrier could be located providing sufficient space for vehicles to turn without blocking the quarry access road or impacting the Public Right Of Way.

5.37 I am satisfied that the movement impacts of visitors to the site travelling for short durations only, for example those visiting for the day to only go to the proposed development, would when considered as part of the whole development be negligible.

5.38 I have confidence that the objectives and proposals within the Travel Plan Commitment statement are robust and achievable and offer as much as an individual developer could reasonably achieve. In my opinion the proposal includes measures which would promote and increase travel to the site using more sustainable modes of transport which can be secured and delivered. As such I consider that the proposal overcomes the previous reason for refusal and is now acceptable in respect of movement and activity".

Landscape character and appearance

50. The planning officer considered the impact of the development on landscape character and appearance in paragraphs 5.46 to 5.62 of the Report. She began with a summary of the importance given by both law and policy to protecting the landscape of the Lake District National Park and World Heritage Site. She reminded the Committee that in giving great weight to the conservation and enhancement of the natural beauty and landscape of the National Park, policies 01 and 05, the Local Plan reflect both the legal framework of protection and national policy as set out in the Framework.

51. The planning officer referred to the approach stated by policy 05, that planning decision taking is to be guided by the Lake District National Park Landscape Character Assessment and Guidelines (April 2021) **["the LCA"]**. She said that the quarry site lies with Landscape Character Type H: Upland Valley and within Area of Distinctive Character 38 – Great and Little Langdale. Her assessment of the key elements and sensitivities of the landscape of the Langdale Valley was as follows –

"5.51 Langdale is a landscape of exceptional quality. Informed by the Landscape Character Assessment Supplementary Planning Document, I consider key elements of the Langdale landscape include:

• A valley floor dominated by river and pastoral farmland, with a distinctive pattern of dry stone walls and barns

• Valley sides covered by a mixture of pastoral farmland and woodland with some of the steeper valley sides of scree, with the Langdale fells prominent

• The landscape is enclosed and sheltered by a complex landscape pattern

• Slate quarrying is apparent with some of the largest quarries in the Lake District

• Despite being one of the busier valleys Langdale has a strong sense of isolation, remoteness, contrast and tranquillity, as a result of the dramatic landform and the perceived naturalness of the high, open, fells.

5.52 I note the landscape sensitivities attributed to the area in the landscape character assessment are:

• Strong sense of remoteness, isolation and tranquillity throughout the area (away from the A593 road corridor);

• Small-scale and intimate settlement pattern, throughout the area which is vulnerable to the introduction of buildings either within village centres or settlement edges, which do not respect existing settlement scale and character;

• Strongly rural character throughout the area, with sustained pressure from recreational activities causing lasting scars being a force for change to this area of distinctive character.

5.53 The Landscape Character Assessment provides the following relevant guidelines for managing landscape change in this area:

• Cultural and historic character – Protect and conserve historic and archaeologically important elements.

• Aesthetic and perceptual character – Retain strong sense of tranquillity throughout most of the area; Maintain strong sense of remoteness and isolation; Retain strongly rural character throughout the area; Encourage restoration of erosion scars associated with most popular routes and manage access to sensitive sites.

5.54 The landscape value of the area is high. The sensitivity of visual receptors is also high given many people will be here to experience scenic beauty and cultural landscape, use the rights of way for recreational activities, or experience views across the wider landscape".

52. In paragraphs 5.55 to 5.62 of the Report, the planning officer gave her advice on the impact of the development on the character and appearance of the surrounding landscape, acknowledging the exceptional quality and high sensitivity of that landscape –

"*5.55 Whilst the wider landscape is unarguably of exceptional quality and high sensitivity, the application site sits within a working quarry. Due to the scale and nature of the site the quarry is highly visible in the wider landscape. The application proposes a number of physical works, including re-cladding the saw sheds, providing platforms and zip wires for the cavern explorer route, making alterations to an existing smaller visitor building, and new hard and soft landscaping.*

5.56 The applicant has provided a Landscape and Visual Appraisal. This considers the proposed development's likely landscape and visual impacts, and potential impacts on special qualities of the national park landscape. In respect of wider landscape impacts it states that 'given the re-use of existing buildings and nature of proposed development within the existing quarry surrounded by woodland and landform, changes as a result

of the proposed development would only be potentially visible from elevated parts of Chapel Stile and fells above it and part of Lingmoor Fell. Effects on landscape or visual receptors outside of these areas would be negligible'. The applicant's landscape and visual appraisal also assesses the proposed car park finding that 'the proposed development occurs within an existing operational quarry and on land which is already hard standing and therefore no notable loss of valued landscape features. The proposed tree planting would represent a beneficial addition to the local landscape, when established. The lighting has been minimised and designed not to cause impacts outside of the quarry site itself, so as not to adversely impact on any dark sky qualities of the landscape. However, the increase in traffic would be noticeable both on site and also in the valley'. I consider this a reasonable assessment of likely impacts. Given the nature of the proposals and their scale and nature, I do not consider that the development would have a harmful impact on the landscape, or the character and appearance of the area.

5.57 The in-cavern explorer route is below ground except for part of the first platform, with this above ground element of the first platform hidden from public view between two rock faces. Visually the cavern explorer would have negligible public impact. Aurally, due to the size of the cavern, the explorer's position relative to the bridleway, the explorer being almost entirely underground, and with its capacity being finite, I do not consider that there would be harmful noise impacts arising from it.

5.58 Despite being extremely utilitarian, I consider the appearance of the former saw sheds has value within the landscape as a visible industrial remnant. The age and colour of the cladding contribute to their character and any replacement would need to be of an acceptable type and appearance. From my site visit, I note that the buildings are in a poor state of repair and are not watertight. I therefore consider that the proposed re-cladding is acceptable, subject to approval of samples.

5.59 Limited alterations are proposed to the smaller visitor building, with the addition of ramped access. This is sited to the south of the saw sheds. Although clearly visible from the immediately adjacent right of way, alterations proposed are acceptable.

5.60 The proposed car park would be to the north of the saw shed on an area currently used for HGV parking and quarry material storage. There is a bund around the boundary of the area which would be retained and new tree screening added. External lighting is proposed. I accept that the car park would be visible until the soft landscaping has established, however the site is currently far from natural, being characterised by quarrying activity and stored material piles, with heavy machinery and vehicle movements not uncommon in this location.

5.61 With regards to the increase in activity as a result of travel, and its impact on the extraordinary beauty and harmony of the Lake District landscape, as considered above, I do not consider that there would be a detrimental impact by way of noise and disturbance by visitors of the Elterwater Experience directly. I also consider that lighting and landscaping would be acceptable, subject to conditions. With regards to the impact of the resultant travel associated with the proposal, with the measures proposed in the Travel Plan Commitment Statement and the associated numbers of visitors to the development, which is finite given the capacity of the cavern, I do not consider that the development would have a detrimental impact on the Lake District

landscape. Controls on hourly numbers of users is recommended to bring likely activity levels within control through planning condition.

5.62 For the reasons above, I consider that the development would not result in unacceptable character, appearance, landscape or visual impacts, in accordance with relevant local plan policies (in particular 01, 02, 05, 06 and 07), the NPPF, and other relevant considerations and would conserve the natural beauty and harmony of the National Park".

Historic environment and cultural heritage

53. In paragraphs 5.63 to 5.84 of the Report, the planning officer considered the impact of the development on the historic environment and cultural heritage of the Lake District National Park. She reminded the Committee that both the Framework and the Local Plan seek to conserve and enhance the significance of heritage assets. She advised that in her view, the foremost heritage issue for the Committee to consider were the potential impacts of the development on the Outstanding Universal Value of the Lake District World Heritage Site. The heritage significance of the World Heritage Site was derived from three *"intertwining themes"* which together combined to define its Outstanding Universal Value. These were a landscape (i) of exceptional beauty, shaped by persistent and distinctive agro-pastoral traditions which give it special character; (ii) which has inspired artistic and literary movements and generated ideas about landscapes that have had global influence and left their physical mark; and (iii) which has been a catalyst for key developments in the national and international protection of landscapes.

54. She advised that the Langdale Valley had been identified as epitomising many of the qualities and attributes which underpinned the case for Outstanding Universal Value. The physical remains of mines and quarries which have shaped the landscape is an attribute of the first of the intertwining themes. Slate quarrying and mining in the valley had left the greatest mark on the Langdale landscape and Elterwater Quarry had a high level of significance. In the view of Historic England, the quarry made a positive contribution to the Outstanding Universal Value of the World Heritage Site.

55. The planning officer summarised the findings of the heritage statement submitted in support of the planning application. She summarised the advice given by both Historic England and ICOMOS in response to consultation on the planning application. Amongst the comments of Historic England was the suggestion that –

"The proposed development would potentially bring a range of public benefits, enhancing or better revealing the significance of the World Heritage Site by providing safe and controlled access to an area of mining heritage not previously accessible to the public and increasing awareness of some of the traditional skills and intangible heritage that has all but disappeared".

56. Amongst ICOMOS' advice were the following concerns –

"Negative impacts derived from the proposal affects mostly intangible attributes, caused by increased traffic, as access is likely to be given to private motorised vehicles, and by the type of envisaged use, which relates more to adventure tourism in a heritage setting, than to cultural heritage interpretation for visitors and residents… This type of planned attraction would transform part of the quarry into a theme park, threatening

to trivialise the experience of an important aspect of the historic heritage of the Lake District, and one of its attributes…the proposal would likewise be the cause of increased traffic to the Great Langdale valley, inviting a type of audience and attraction that is likely to disrupt its tranquil and contemplative character…the proposed tourist development does not appear in keeping with the character of the valley and is not compatible with the attributes of OUV conveyed by this part of the World Heritage Site".

57. The planning officer advised that the potential impact of the development on cultural heritage and the World Heritage Site was critical to the acceptability of the planning application. She considered that the physical aspects of the development would not result in unacceptable heritage impacts. She agreed with Historic England that the proposed development would allow visitors to experience the environment of a historic slate mine. Providing public access to that asset of industrial heritage and the opportunity for its interpretation was a public benefit which carried weight. She acknowledged that the resulting increase in activity within the quarry site would also change the perceptual character of the heritage asset and cause some harm. She saw no evidence to support ICOMOS' concern that the development would attract *"a type of audience"* likely adversely to affect the character of the Langdale Valley.

58. The planning officer then offered her advice to the Committee, which included her consideration of the application of the Sandford principle –

"5.78 Movements to and within the site may also bring change to activity levels, with the previous application refused as it failed to demonstrate that the increase in activity as a result of travel would not negatively impact…the landscape with resultant harm to…the Outstanding Universal Value of the English Lake District World Heritage Site. I consider that the applicant has now demonstrated, through the Travel Plan Commitment Statement and Visitor Management Plan, that activity levels would be appropriately managed and controlled. These can be secured through condition.

5.79 Therefore, in consideration of the world heritage site's attributes and significance, I find the level of harm to intangible attributes resulting from proposals to be of a low level, and certainly less than substantial within the context of the World Heritage Site as a whole. I give the impacts identified significant weight, reflecting the status of protection attributed to the world heritage site, however I still find the benefits of development, particularly providing public access to a currently inaccessible heritage asset, well outweigh the low level harms I have identified.

5.80 Similarly, affording the conservation of cultural heritage greater weight than the promotion of opportunities for understanding and enjoyment of special qualities, I still find the benefits of the development well outweighs the low level harm identified.

5.81 I agree with ICOMOS' comments regarding the need for the development to provide interpretation of the quarry's history and the role of quarrying within the world heritage site. Accordingly, a condition should be imposed obligating the applicant to submit for approval, and subsequently deliver a visitor interpretation strategy for the site.

5.82 I also am satisfied that the proposals would not harm the significance of nearby listed buildings directly, nor by development or changes to activity levels within their

setting. Nearby heritage record sites (an undesignated heritage asset) would also be unaffected.

5.83 For the reasons above, I am satisfied that subject to appropriate conditions, the development would result in a low level of harm to heritage assets and, even attributing any harm great weight, the public benefits of development, particularly public access to a heritage asset, outweigh the harms identified in line with Policy 07 and the tests set out within the NPPF.

5.84 Wider issues regarding the national park as a whole raised by ICOMOS are not before us for consideration under this application. With the previous application, ICOMOS requested that the application be halted and that further tourism proposals are suspended altogether until an interpretation strategy for the entire world heritage site is prepared. Such a moratorium is inconsistent with the legal framework of the planning system and is outside the scope of this application".

The planning officer's conclusions and recommendation

59. The planning officer's overall conclusions and recommendation were set out in section 6 of the Report –

"6.1 The development proposes a tourism attraction, making use of previously mined caves and giving people the opportunity to access these caves which are a geographically fixed resource in the grounds of Elterwater Quarry.

6.2 The proposed development would further the promotion of opportunities for understanding and enjoyment of special qualities of the National Park and the Outstanding Universal Value of the English Lake District World Heritage Site.

6.3 It has been demonstrated that the site can accommodate visitors to it and that measures proposed to promote and increase travel to the site using more sustainable modes of transport are sufficiently robust and achievable. The development would not result in harm as a result in increase in activity as a result of travel.

6.4 The proposal would not give rise to unacceptable impacts on character and appearance. Limited external works and appropriate landscaping are proposed. No unacceptable changes to activity levels on the site or in the area have been identified.

6.5 In relation to the impact of the development on the historic environment and cultural heritage, the development would result in low level harms to intangible attributes due to changes in activity. However, affording greater weight to the conservation of cultural heritage in a National Park, and great weight to the conservation of heritage assets, any harms arising would be outweighed by public benefits, in particular public access.

6.6 I am satisfied that in all other respects, including nature conservation interests, and drainage and flood risk, the development is acceptable.

6.7 Subject to the conditions recommended and having regard to the provisions of the development plan (in particular Lake District National Park Local Plan Policies 01, 02, 03, 04, 05, 06, 07, 13, 16, 18, 19, 20, 21, 22 and 28) and other material

considerations (including the provisions of the NPPF), the development is considered to be acceptable".

The planning permission

60. The planning permission was issued subject to 23 conditions on 3 May 2024.

61. Condition 9 states –

"Prior to the first use of the development hereby permitted (or any part thereof), the operator shall prepare a Travel Plan of not less than five-year horizon, which shall be submitted to the Local Planning Authority for approval. The Travel Plan shall incorporate the measures as stated in the submitted Travel Plan Commitment statement (March 2024) and identify the measures that will be undertaken by the operator to encourage the achievement of a shift away from the use of private cars by visitors and staff towards access to the development by non-car means, including measures to promote pre-booking and discourage travel without reservation.

The Travel Plan shall include objectives and targets for a reduction in travel to the site by car. The measures identified in the Travel Plan shall be implemented by the operator within 6 months of the first use of the development hereby permitted.

The Travel Plan shall incorporate a programme for the preparation of an independently verified annual monitoring report reviewing the effectiveness of the Travel Plan against the objectives and targets set and including any necessary amendments, measures or revised travel plan required to improve performance. A paper and electronic copy of the annual monitoring report and any amended travel plan as is required shall be provided to the Local Planning Authority for approval in accordance with the approved programme.

The development shall be operated in accordance with such details as are approved by the Local Planning Authority

REASON
To contribute towards the promotion, development and use of sustainable travel choices in accordance with the provisions of Policy 2 of the Lake District National Park Local Plan 2020-2035".

62. I note that the final sentence of condition 9 ("*The development shall be operated…Local Planning Authority*") was not included in the draft of that condition as set out in the Report.

63. Condition 17 states –

"The cavern explorer route shall not be used by more than 294 people per day.

REASON

To control and manage likely movements to the premises and actively on the premises and within the locality to avoid harmful changes to the character and appearance of the area, special qualities of the Lake District National Park, or the significance of the

English Lake District World Heritage Site as a result of activity, in accordance with Lake District National Park Local Plan 2020-2035 policies 01, 02, 05, 06 and 07".

The unilateral undertaking

64. Zip World Limited as Operator and Elterwater Firbank Limited as Owner have executed a Deed dated 10 July 2024 in favour of the Defendant as local planning authority **["the Deed"]**. The recitals to the Deed record that Elterwater Firbank Limited is the freehold owner of a parcel of registered land which I understand to comprise the quarry site; and that Zip World Limited is taking a lease of that land from Elterwater Firbank Limited. Clause 2.2 of the Deed stated that references to any party in the Deed shall include that party's successors in title and any person deriving title through or under that party.

65. Clause 4 of the Deed states that it is made pursuant to section 106 of the 1990 Act. Clause 4.2 provides –

"The covenants restrictions and obligations imposed on the Owner contained in this Deed are all planning obligations for the purposes of section 106 of the Planning Act and are enforceable by the Authority as Local Planning Authority against the Owner but will not take effect until Commencement Date [i.e. of the development]".

66. The operative clauses of the Deed do not in fact impose any covenants, restrictions or obligations on the Owner. Instead, clause 5.1 of the Deed contains three covenants on the part of the Operator, Zip World Limited, including –

"5.1 The Operator covenants with the Authority:

5.1.1 To observe the restrictions and perform the obligations set out in the First Schedule".

67. The First Schedule to the Deed states –

"The Owners and successors in title covenants with the Authority as follows:

Not to allow operation of the use permitted by the Permission [i.e. the planning permission] until such time as a Full Travel Plan based upon the Travel Plan of 16 April 2024 and the Travel Plan Commitment Statement of 11 March 2024 has been submitted to and approved by the Local Planning Authority, or the Planning Inspectorate as the case may be.

Thereafter to implement the agreed terms of the Full Travel Plan".

Ground 1

Ms Hunt's intervention

68. Under this ground of challenge, the Claimant's case is that during the latter stages of the Committee's discussion of the planning application at their meeting on 1 May 2024, Ms Hunt intervened and made a statement as to the proper approach to application of the *Sandford* principle which was wrong in law and misled the Committee into legal error in determining the planning application. In order to address that contention, it is

necessary to set out the relevant extract from the transcript of the Committee's discussion on 1 May 2024.

69. In order to provide the context, I begin that extract from the point at which Mr Peter Walter, who spoke and voted against the approval of the planning application, took the discussion back to the *Sandford* principle. Those who spoke during the discussion of the *Sandford* principle included not only Tiffany Hunt but also Peter Walter, Mark Kidd, Andrew Smith and Vicky Hughes.

"Peter Walter: … can I … take us back to the Sandford Principle…we start off at 98 cars a day … the Travel Plan aims to reduce that number. We don't know by how much it will reduce that number, and we don't know for how long it would be successful. But if you take it back to Sandford Principle, we have to give stronger or greater weight to protecting the park and the natural environment. And then the second principle, so anything that we are doing in … increasing those numbers of cars coming is kind of counter to the first principle. And I just remind members that we have to give a greater weight to the first principle of protecting the natural environment.

Mark Kidd: Yes. So, the Sandford Principle, we have two duties as a National Park. One is preserving the landscape, and the second one is promoting opportunities to experience the outstanding, special qualities of the National Park; and if there's ever a conflict, ideally resolve the two duties, and if there's ever an either or, you have to go with … the first one.

Peter Walter: If I can just come back. So any cars increasing travel in Elterwater is going against the first principle.

Andrew Smith: You're required to give greater weight. It doesn't necessarily mean that if you had… I'm just trying to pick a completely mad example, but you have something that delivers unbelievable amounts of benefit to the second purpose, in terms of promoting those opportunities for education and enjoyment, and it's going to generate one car. It doesn't say, you're generating one car, so greater weight means that you've got a really small amount of harm over here, so I have to go with that over this unbelievable amount of benefit over here. It doesn't force you into that scenario, but it does, as you say, Peter, correctly require you to give greater weight to the first principle over the second, if you identify, the first purpose over the second, if you identify a tension.

Mark Kidd: Tiffany.

Tiffany Hunt: I think it's an important point, and I certainly, throughout my working life, have been brought up on the Sandford Principle, and I've certainly taken it into account here. Just not intending to play devil's advocate, but I think you've got the two statutory purposes, conserve and enhance the natural beauty, wildlife and cultural heritage; and then secondly, promote opportunities for the understanding and enjoyment of the special qualities of the National Parks by the public. I suppose arguably you could say that this enhances the cultural heritage by providing access to a site that's never been open to the public before; and will actually introduce visitors to an aspect of the Lake District heritage that tends to be rather underplayed - the industrial heritage. Then the second duty or statutory purpose of promoting opportunities for the understanding and enjoyment of the special qualities of National

Parks by the public, I think it does fulfil that. So, I think it's a fine balance, as ever, and I think that's what it comes back to. It's always going to be a balance, and all we can do is make our best judgements, weighing up the pros and cons.

Mark Kidd: That's it. And that's what we're going to do now. Any other comments, members? Because we're ultimately going to head towards a vote. Tiffany".

70. The discussion then turned to Ms Hunt's proposal that the Committee should approve the planning application –

"Tiffany Hunt: So if I pin my colours to the mast. We've had a long and very good discussion about this. It's always been a challenging application. I think we are fully aware of the amount of public and local interest and have certainly looked very, and studied carefully, both reports and also the sort of concerns that have been raised by both individuals and local community, and also the many other groups involved in working in the Lake District. And I think it is fair to say that there have been some in support. It's not just objections that we're looking at. I thought Catherine's report was very helpful, as I said at the outset, in setting out the issues that we needed to be looking at, and get it right, so that we are particularly focused on the aspects of transport.

…

So, we bump up against the issue of the Transport Plan and how robust it is. And this is one where I think there are always going to be some doubts, but I think on balance, I come back to giving weight to the Travel Plan, the intentions of the Travel Plan, and I have listened to the points made by the applicants and their commitment to implementing it…..

I think there is much to be said for heritage interpretation, and it is an indoor attraction. I think if this was all happening outside, I would be very wary indeed. In fact, I think it would just be a flat no. What makes, I think to me, a big difference is that it's underground…

I think we have to recognise that tourism is very important to the Cumbrian economy, and the Cumbria Tourism's recent destination management plan highlights that fact all clearly. And also that I was concerned in the ICOMOS report that this would invite a type of audience and attraction that's likely to disrupt tranquil and the contemplative character of the Valley. I think we have to accept that, and welcome, in fact, that there are a much broader, more diverse group of visitors coming to the Lake District who might well want to be introduced to the Lake District or enjoy it in slightly different ways than has been traditional in the past. I do take very seriously what UNESCO and ICOMOS say. We do value our World Heritage Site inscription, and that's certainly not something we would wish to put under threat.

….overall, therefore, in weighing up my pros and cons and in the balance, I come down on the side of supporting this application. I hope, as I said earlier, that this is an application where the issues of sustainable transport are really focused upon and could become an exemplar in the future….I would actually like to propose that we should accept this application.

Mark Kidd: Okay. Thank you, Tiffany. Peter.

> *Peter Walter: Thank you. Can I summarise an alternative position? I don't think this Travel Plan is credible, or can give us any significant confidence that the 100 cars a day that are proposed will not simply end up driving to Elterwater and parking on the common. I appreciate the benefits of the interpretation and understanding of mining, and I think that is a real benefit. But I think in the absence of credible measures to significantly reduce the impact on residents, visitors, and landscape of 100 cars a day, that this is not a credible travel plan and that that damage will still occur.*
>
> *Mark Kidd: Okay. Thank you, Peter. So, we've got a proposal for and a proposal against. Anyone wish to second? Vicky.*
>
> *Vicky Hughes: Thanks, Mark. Just weighing everything up and listening to all the comments, I feel I would be wishing to support Tiffany's recommendation of approval. Just looking at the conclusion in the report and weighing up the impacts on the character and the appearance of the area, because as Tiffany said, it's underground. There's going to be very little impact. I think the main concern is the travelling to the attraction, and the 100 cars a day is going to be the maximum in busy periods. It's not going to be every day. I do think there is a way of working within the Travel Management Plan to assist that and reduce that".*

71. The Committee then moved to a vote, as recorded in the minutes of the meeting (to which I have referred above).

The Claimant's submissions in summary

72. For the Claimant, Mr Brendan Brett focused on Ms Hunt's assertion that providing public access to the quarry and introducing visitors to the Lake District's industrial heritage would enhance the cultural heritage of the National Park. It was submitted that assertion confused the statutory purposes under section 5(1) of the 1949 Act and had led the Committee into legal error. On a true construction of section 5(1), the provision of public access and promotion of better understanding of a heritage asset can only be taken to further the second statutory purpose. Ms Hunt's suggestion that those benefits might further the first statutory purpose by enhancing cultural heritage was irrational.

73. Mr Brett contended that Ms Hunt's intervention will have carried weight with her fellow Committee members, as she was the Chair of the Defendant and accordingly a person of authority. Moreover, Ms Hunt prefaced her intervention by asserting that she had very considerable experience and expertise in the application of the *Sandford* principle. It was submitted that Ms Hunt's erroneous comments were material to the Committee's decision to grant the planning permission. The Committee was tied at three votes each in favour and against approval of the planning application. The decision to grant rested only on the casting vote of the Chair, Mr Kidd.

Discussion

74. Ms Hunt's comments on the *Sandford* principle came towards the end of a brief discussion between members of the Committee as to the correct approach to its application in their decision making. That brief discussion was initiated by Mr Walter. He correctly reminded his colleagues that the *Sandford* principle required the Committee to give greater weight to the first statutory purpose of protecting the natural environment of the Lake District National Park.

75. Mr Walter's correct statement of the approach required of the Committee in applying the *Sandford* principle was then immediately endorsed by the Chair, Mr Kidd. Mr Kidd then briefly outlined the Committee's duty in applying the *Sandford* principle, essentially in the terms of section 11A(1A) of the 1949 Act. The Defendant's Head of Development Management, Mr Smith, then also endorsed Mr Walter's understanding of the *Sandford* principle as being correct, that if the Committee found the planning application to give rise to a tension between the two statutory purposes, they were required to greater weight to the first purpose over the second purpose.

76. It was at that point that Ms Hunt made the comments which are the basis of this ground of challenge. She firstly acknowledged the importance of the *Sandford* principle. She then stated her familiarity with the principle. She then said that she had taken the principle into account in considering the planning application for the development. She briefly and correctly summarised the two statutory purposes. She did not quarrel with the explanation of the *Sandford* principle given by her colleagues and Mr Smith. Nor did she seek to add to or to qualify that explanation. Indeed, there is nothing in the recorded discussion to suggest that there was disagreement between members of the Committee as to what the *Sandford* principle required of them. All who sought to articulate the principle did so correctly, reminding themselves that if they found the development to give rise to a conflict between the two statutory purposes of designation of National Parks, they were required to give greater weight to the first purpose in determining the planning application. Ms Hunt did not demur from that explanation of the Committee's duty under section 11A(1A) of the 1949 Act.

77. Ms Hunt did offer some very brief thoughts on the extent to which the planning application proposed development which would fulfil or conflict with the two statutory purposes. She was clear in her view that the development would fulfil the second purpose of promoting opportunities for the public's understanding and enjoyment of the special qualities of the Lake District National Park. In summarising his reasons for opposing the grant of planning permission, Mr Walter indicated that he shared that view. There is nothing to suggest that the development's ability to further the second statutory purpose was a point of disagreement between members of the Committee.

78. On the question whether the development would further the first statutory purpose, Ms Hunt was more circumspect. In the passage on which the Claimant relies, Ms Hunt did not express a decided view as to whether the development would fulfil that purpose. She confined herself to suggesting that there was an argument that opening up a hitherto inaccessible element of the Lake District's industrial heritage to public view would enhance the cultural heritage of the National Park. She did not state whether she endorsed that argument. Nor did she express any view as to the weight to be given to that argument, were it to be accepted.

79. The Claimant submits that the suggestion itself was plainly an error of law, on the basis that the provision of public access and promotion of better understanding of a heritage asset can only be taken to further the second statutory purpose under section 5(1) of the 1949 Act. In my view, the Claimant has misunderstood the point that Ms Hunt was seeking to make. Her point was a simple and straightforward one. The planning officer had concluded that the increased activity within the quarry site proposed by the development would result in low level harm to the quarry as an element of the Lake District's industrial heritage. On the advice of the planning officer at paragraph 5.80 of the Report, it was the existence of that harm to cultural heritage which engaged the

Sandford principle. Ms Hunt's point was that the resulting degree of conflict between the two statutory purposes should not be overstated, it being arguable that there was at least a degree of harmony between offering the opportunity for the public to appreciate at close hand a significant and hitherto underappreciated feature of the National Park's cultural heritage; and the conservation and enhancement of that cultural heritage.

80. There is no error of law in that suggested argument. Nor is it irrational. In R(Stubbs) v Lake District National Park Authority [2021] PTSR 261 at [40], Dove J observed that section 11(1A) of the 1949 Act operates in practice on the basis of broad and often subjective judgments by relevant authorities in relation to how the best interests of the statutory purposes are to be served by the decisions which they are called upon to make. Here, Ms Hunt did not dispute the planning officer's conclusion that the development gave rise to a conflict between the two statutory purposes, by virtue of the harm to cultural heritage which would result from the proposed visitor attraction at the quarry. Ms Hunt did not seek to persuade the Committee that the *Sandford* principle was not engaged. She did not suggest that Mr Walter, Mr Kidd and Mr Smith had misstated the *Sandford* principle. She did no more than to suggest that the extent of actual conflict between the two statutory purposes which would result from the development might be said to be limited, in the light of the advice and conclusions drawn by the planning officer in the Report. In so doing, Ms Hunt was properly playing her part in fulfilling the role vouchsafed to the Defendant under section 11A(1A) of the 1949 Act.

81. In order to assist the court as to the correct approach to take in addressing the issue raised under this ground, Mr Brett helpfully drew my attention to R(Bishop's Stortford Civic Federation) v East Hertfordshire District Council [2014] PTSR 1035. In that case, the claimant's argument was that the intervention of a particular member of the Defendant Council had materially misled the planning committee into granting planning permission on a false understanding of the planning history. Cranston J rejected that argument on the facts, holding that the councillor's intervention had not influenced the committee into making its decision other than on a proper approach to the planning issues in the case before it. At [38]-[39] Cranston J referred to the line of authority which shows the court's general reluctance to conduct a detailed forensic analysis of the discussion between members of a local authority committee which precedes the committee's formal collective decision –

"38. Judges have long appreciated the difficulties. In The King v London County Council [1915] 2 KB 466 the issue was whether the Council as a licensing authority of theatres and cinemas had taken into account what was said to be an irrelevant factor, namely, that the majority of the applicant company's shareholders were enemy aliens. What some councillors had said in debate was before the Court of Appeal. Buckley LJ said that he did not pay much attention to the views expressed by six members out of the whole Council in determining what was the ground upon which the Council acted: at 489. In a well-known passage Pickford LJ (later Lord Sterndale MR) said:

> *"With regard to the speeches of the members which have been referred to, I should imagine that probably hardly any decision of a body like the London County Council dealing with these matters could stand if every statement which a member made in debate were to be taken as a ground of the decision. I should think there are probably few debates in which someone does not suggest as a ground for decision something which is not a proper ground; and to say that, because*

> *somebody in debate has put forward an improper ground, the decision ought to be set aside as being found on that particular ground is wrong:" at 490.*
>
> *39. Simon Brown J referred to this passage with approval in R v Exeter City Council ex. p J L Thomas [1991] 1 QB 471, as did Burnett J in Scottish Widows plc v Cherwell DC [2013] EWHC 3968 (Admin), [20]. In ex p JL Thomas Simon Brown J said that since t"he planning committee in that case was taking a collective decision on the application, one had to consider the "general tenor of the discussion rather than the individual views expressed by committee members, let alone the precise terminology used": at 483H-484A. Accordingly, he did not find it helpful or necessary to refer to the details of the relevant committee meeting on 20 June 1988. In my view the same applies here".*

82. In the present case, the Committee had been reminded by the planning officer in paragraph 4.8 of the Report of the two statutory purposes of designation of National Parks and of the *Sandford* principle. In paragraphs 5.80 and 6.5 of the Report, the planning officer had advised the Committee of her conclusions on the application of the *Sandford* principle to the development proposed by the planning application. It is clear, from the recorded discussion at the meeting of the Committee on 1 May 2024, that its members were both well aware of the *Sandford* principle and correctly understood how they must proceed in order to give effect to that principle in determining the planning application. The submission that the Head of Development Management gave erroneous and misleading advice is simply wrong. Mr Smith stated the *Sandford* principle correctly. He gave a somewhat extreme example to illustrate its application, but the example given was nonetheless consistent with the *Sandford* principle as formulated in section 11A(1A) of the 1949 Act.

83. Ms Hunt did not question the correctness of the explanation of the *Sandford* principle given by the Chair, the Head of Development Management and by Mr Walter. The Claimant's submission that Ms Hunt was stating a position on the law is incorrect. She did not need to, since she did not quarrel with the explanation of the *Sandford* principle already given by her colleagues. Given that she did not challenge the accuracy of the explanation of the *Sandford* principle given by Mr Walter, Mr Kidd and Mr Smith, the submission that she is to be taken to have asserted her position as Chair of the Defendant and her expert understanding of the *Sandford* principle goes nowhere: she added the weight of her authority to the explanation already given by her colleagues. Nor did she question the need to apply the *Sandford* principle in determining the planning application. In the light of these matters, it is fanciful to suggest that Ms Hunt's intervention, such as it was, may have led her colleagues on the Committee into either misunderstanding or misapplying the *Sandford* principle when the Committee came to their collective decision. As the final part of the Committee debate indicates, the principal point of disagreement between those members who were minded to approve the planning application and those who were minded to oppose it was the efficacy of the revised Travel Plan.

Conclusion

84. For the reasons I have given, the Claimant's case under this ground is founded on a misunderstanding of the intervention by Ms Hunt upon which the Claimant's seeks to rely. Read in context, it is clear that Ms Hunt neither misunderstood the *Sandford* principle nor made a legally erroneous statement to her Committee colleagues on its

application. In any event, the *Sandford* principle was correctly stated in the Report for the benefit of members of the Committee who, the record shows, had a clear and correct understanding of what the principle required of them in determining the planning application. They reminded themselves of the *Sandford* principle during the course of their discussion of the planning application. The Claimant's contention that the Committee was misled into error in applying the *Sandford* principle when they decided to grant the planning permission cannot be sustained. The evidence does not support the conclusion that the Committee failed properly to understand and to apply the *Sandford* principle when they reached their decision on 1 May 2024.

85. Ground 1 is rejected.

Ground 1A – the application to amend

86. Permission to proceed with this claim for judicial review was granted on 25 July 2024. The Defendant filed detailed grounds of defence on 18 September 2024. On 8 April 2025, one day prior to the filing of the Claimant's skeleton argument and some three weeks prior to the hearing of the claim on 30 April 2025, the Claimant filed an application to amend its grounds of claim. The proposed amendment was to add a further ground of challenge, contending that in deciding to grant the planning permission the Defendant had erred in its interpretation and application of the *Sandford* principle.

87. The Claimant made no attempt in its application form to explain or to justify the obvious lateness of the proposed amendment. Mr Brett fairly accepted that there had been no good reason why the Claimant could not have advanced the new ground of challenge in its statement of facts and grounds in support of the claim lodged in June 2024. The amended ground was advanced on the basis that it increased the scope of ground 1. In fact, the amended ground advances a substantial and free-standing new ground of challenge to the Defendant's decision to grant the planning permission.

88. It was said that the Defendant suffered no prejudice as a result of the lateness of the application to amend. That is plainly incorrect. As Mr Ned Westaway submitted on behalf of the Defendant, the Defendant had no opportunity to respond to the proposed new ground either in evidence or by way of detailed defence. In the circumstances, it is not for the Claimant to speculate on the extent to which the Defendant might find it necessary or appropriate to file further evidence or to supplement its grounds of defence in response to this further alleged legal flaw in its decision making on the planning application. There is, moreover, force in Mr Westaway's argument that the new ground may raise wider questions as to how the Defendant approaches the application of the *Sandford* principle in development management decision making, which the Defendant would have wished to address in evidence.

89. These are powerful reasons to refuse the Claimant's application to amend its grounds of claim. They are further reinforced by the lack of substantive merit in the proposed new ground of challenge, as I shall now explain.

90. The Claimant founds its argument on the planning officer's analysis in paragraphs 5.79-5.80 and 6.5 of the Report. In those paragraphs, the planning officer found that the development would cause low level harm to the significance of the Lake District World Heritage Site. That harm resulted from the increase in activity within the quarry site,

which would also change what she described as the perceptual character of the quarry as a feature of the Lake District's industrial heritage. In the light of those findings, the planning officer acknowledged that the development would not further the first statutory purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the Lake District National Park. In particular, the development would not further the purpose of conserving the cultural heritage of the National Park. It is pertinent to recall that the planning officer had concluded in paragraph 5.62 that the proposed development would conserve the natural beauty and harmony of the National Park.

91. In paragraph 5.79 of the Report, the planning officer found the development to have the benefit of offering public access to a heritage asset which is not currently open to the visiting public, in that way furthering the second statutory purpose of promoting opportunities for the understanding and enjoyment of the special qualities of the National Park. In the light of that finding, a conflict had arisen between the two statutory purposes and the *Sandford* principle was engaged.

92. The planning officer applied the *Sandford* principle in paragraph 5.80 of the Report. She stated her conclusion in paragraph 6.5 that, affording greater weight to the conservation of cultural heritage in the National Park, and great weight to the conservation of heritage assets, she nevertheless found that the harm resulting from the development would be outweighed by its public benefits, in particular public access.

93. Mr Brett submitted that the planning officer's analysis was erroneous in law. He submitted that the purpose of the *Sandford* principle, given statutory effect by section 11A(1A) of the 1949 Act, is to resolve the conflict between the two statutory purposes under section 5(1) of the 1949 Act where they cannot otherwise be reconciled. The *Sandford* principle does so by preferring the first purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of a National Park over the second purpose of promoting opportunities for the understanding and enjoyment of the special qualities of the National Park. Mr Brett submitted that in order for that statutory preference to be given effect, the first purpose must always prevail over the second purpose. As a matter of law, it is inconsistent with the proper application of the *Sandford* principle for the second purpose to be allowed to prevail on the basis that the benefits which result from furthering the second purpose outweigh the harm which results from failing to further the first purpose. For those reasons, the advice and conclusions of the planning officer failed to give proper effect to the *Sandford* principle and to the statutory purpose of section 11A(1A) of the 1949 Act in giving effect to the *Sandford* principle.

94. The insuperable difficulty which the Claimant faces in pursuing that line of argument is that it simply ignores the clear language of section 11A(1A) of the 1949 Act. In a case in which there appears to be a conflict between the two purposes specified in section 5(1), the obligation placed upon a relevant authority is to attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park. Had Parliament intended that in any such case, the purpose conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park must necessarily prevail, it would have been straightforward to enact the *Sandford* principle in terms to that effect.

95. In other words, had the legislative intention been to prescribe as the outcome in any such case, that the first purpose specified in section 5(1) must prevail, section 11A(1A) of the 1949 Act could and would have been expressed in those terms. Instead, Parliament has chosen to prescribe the relative weight to be given to the two specified purposes in section 5(1) in any case in which they are found to be in conflict. Parliament has chosen to tilt the balance in favour of furthering conservation and enhancement of natural beauty, wildlife and cultural heritage of the Park over furthering the promotion opportunities for the understanding and enjoyment of the Park's special qualities. The critical point being that under the clear terms of section 11A(1A) of the 1949 Act, it remains for the relevant authority to strike the balance in the exercise of its evaluative judgment, provided that in doing so the authority gives greater weight to the purpose of furthering the conservation and enhancement of natural beauty, wildlife and cultural heritage of the Park.

96. In the present case, the function being performed by the Defendant was the determination of a planning application in accordance with section 70 of the 1990 Act. The Defendant was required to take account of all material considerations, including the relevant policies of the development plan. The process of determining a planning application is evaluative. It is trite law that the attribution of weight to material considerations was for the Defendant as the decision maker, in the exercise of its planning judgment. Although section 38(6) of the 2004 Act requires the Defendant to recognise the priority to be given to the development plan, it does not affect the fundamental principle that it is for the Defendant to evaluate the considerations which are material to its decision whether to grant planning permission: see City of Edinburgh Council v Scottish Secretary [1997] 1 WLR 1447, 1458G-H.

97. Section 11A(1A) of the 1949 Act imposes further obligations which the Defendant is required to fulfil in determining a planning application in relation to any land in the Lake District National Park. In determining any such planning application, the Defendant is required to seek to further the purposes specified in section 5(1) of the 1949 Act: see New Forest National Park Authority v Secretary of State for Housing, Communities and Local Government [2025] EWHC 726 (Admin). In the case of a planning application which appears to give rise to a conflict between those specified purposes, in determining that application the Defendant must give greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the National Park.

98. However, there is a clear and obvious distinction between an obligation to give greater weight to one purpose and correspondingly, less weight to another purpose; and an obligation to regard the first of those two purposes as determinative. A decision maker who is required to give greater weight to one purpose over another nonetheless retains an element of judgment. In particular, the decision maker is able to judge whether that to which they are required to give greater weight is of such limited significance, and that to which they are required to give lesser weight of such high significance, that the former nevertheless overrides the latter. Otherwise, the decision-making process ceases to be evaluative and instead becomes prescriptive.

99. As I have said, it would have been open to Parliament to prescribe the outcome in any case in which a conflict appeared to arise between the two purposes specified in section 5(1) of the 1949 Act. It would have been possible to require the decision maker in any such case to give effect to the first specified purpose; or to state that in any such case

the first specified purpose shall prevail. Parliament did not enact the *Sandford* principle in those terms. As Dove J observed in R (Stubbs) v Lake District National Park Authority [2021] PTSR 261 at [39], the starting point must be the statutory language of what is now section 11A(1A) read in the context in which it sits.

100. The requirement imposed upon the Defendant in the present case was to give greater weight in the process of determining the planning application to the first purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the Lake District National Park. That was precisely what the planning officer did in paragraphs 5.79-5.80 and 6.5 of the Report. For the reasons I have given, it was open to her in law to advise, and for the Defendant's Committee to conclude, that the benefits offered by the development in providing public access to and appreciation of the quarry as a feature of the Lake District's industrial and cultural heritage nevertheless overrode the limited harm caused to that heritage asset by increased activity at the quarry site. That analysis and that conclusion involved neither any misinterpretation nor misapplication of the *Sandford* principle as enacted under section 11A(1A) of the 1949 Act.

101. I refuse permission to amend the grounds of claim. Had I given permission to amend, I would have found the proposed additional ground to be arguable but would have rejected it for the reasons I have given.

Ground 2

Summary of the Claimant's submissions

102. Mr Brett submitted that of central importance both to the planning officer's recommendation to approve the planning application and the Committee's acceptance of that recommendation was the planning officer's advice in paragraph 5.33 of the Report, that the measures proposed in the revised Travel Plan and committed to in the Travel Plan Commitment statement can be secured through the imposition of a planning condition. It was submitted that, properly construed, condition 9 of the planning permission failed to secure the delivery of those measures and to ensure that the development would operate effectively in accordance with the controls proposed under the revised Travel Plan. Given that the need for effective control of the traffic and transport impacts of the development had been of critical importance to the Committee's decision to grant planning permission, the planning officer's advice was both erroneous and materially misleading. On a proper understanding of the terms of condition 9, that condition would not enable the Defendant to enforce effective control of operation of the development. The inadequacy of the condition had not been remedied by the additional sentence added to the draft condition following the meeting of the Committee on 1 May 2024.

103. The Claimant's argument is founded on the contention that although condition 9 certainly contains an enforceable obligation to prepare and to submit a Travel Plan for the Defendant's approval, the condition does not seek to control the position that would result in the event that the operator were to submit for approval a draft Travel Plan which the Defendant judged to be unacceptable. Although it would then be open to the Defendant to refuse to approve the submitted Travel Plan, the operator would nevertheless have fulfilled the operative requirement of condition 9 to submit a Travel Plan for approval. Under the terms of the condition, the operator would be free to proceed to implement the development. Moreover, in the absence of an approved Travel

Plan, the operator would be relieved in practice from the requirement to operate the development in accordance with the approved details or to implement the approved measures, since there would be no such approved details or measures. The Defendant would have no basis upon which to enforce, since the operator would have complied with the operative requirements of the condition. At best, the Defendant would be driven to approving a Travel Plan which they considered to be unsatisfactory, if only to give condition 9 at least some degree of practical effect in controlling the operation of the development.

104. Had the Committee appreciated that condition 9 was flawed in this way, they might well have reached the view that the Interested Party had failed to address the reasons why the previous application for planning permission had been refused.

Discussion

105. The starting point is properly to understand the controls imposed by the terms of condition 9 of the planning permission. I follow the well-established approach which is to find the natural and ordinary meaning of the words used in the condition, viewed in their particular context and in the light of common sense: see Lambeth London Borough Council v Secretary of State for Housing Communities and Local Government [2019] 1 WLR 4317 at [19].

106. Condition 9 essentially breaks down into four requirements –

(1) Prior to first use of the development, the operator is required to prepare and to submit a Travel Plan to the Defendant for approval. The Travel Plan is to have a time horizon of at least five years.

(2) The contents of the Travel Plan are stipulated in the condition. The Travel Plan must incorporate the measures stated in the submitted Travel Plan Commitment Statement dated March 2024. The Travel Plan must also identify measures that the operator will undertake to encourage the achievement of a shift away from the use of private cars by visitors and staff towards access to the development by non-car means, including measures to promote pre-booking and discourage travel without reservation. The Travel Plan must also include objectives and targets for reduction in travel to the quarry by private car. Finally, the Travel Plan must incorporate a programme for the preparation of an independently verified annual monitoring report reviewing the effectiveness of the Travel Plan against the objectives and targets set and including any necessary amendments, measures or revised travel plan required to improve performance.

(3) The operator is required to implement the measures identified in the approved Travel Plan within 6 months of first use of the development. Thereafter the operator is required to operate the development in accordance with the details approved by the Defendant.

(4) The operator must submit the annual monitoring report and any amended Travel Plan as may be required to the Defendant for approval in accordance with the programme approved following submission of the Travel Plan.

107. In paragraph 5.27 of the Report, the planning officer drew the Committee's attention to the panoply of measures proposed by the Interested Party in the Travel Plan Commitment Statement in order to overcome the reasons for refusal of the earlier planning application. Her advice in paragraph 5.38 was that those measures were robust and achievable and offered as much as a developer could reasonably achieve. The proposed measures would promote and increase travel to the quarry site using more sustainable modes of transport than the private car. Those measures were able to be secured and delivered. On that basis, the planning officer concluded that the planning application had overcome the earlier reasons for refusal and was acceptable in terms of movement and activity. The means whereby the measures proposed in the Travel Plan Commitment Statement were to be addressed and secured was through the imposition of a condition. In paragraph 5.33 of the Report, the planning officer advised that such a condition would require a final submission where details of those measures could be expanded upon and secured.

108. In short, the measures proposed in the Travel Plan Commitment Statement were the key factor which had enabled the planning officer to reassure members of the Committee that the objections to the development which resulted in refusal of the previous planning application were able to be overcome. The planning officer's advice was clear that if planning permission was to be granted, those measures must be secured by condition.

109. In my judgment, condition 9 fulfils that that requirement. Condition 9 does not simply require the operator to submit a Travel Plan for the Defendant's approval. It imposes a requirement on the operator to incorporate into that draft Travel Plan *"the measures as stated in the submitted Travel Plan Commitment statement (March 2024)"*. The submission for approval of a Travel Plan which failed to incorporate those measures would be in breach of that requirement.

110. Condition 9 requires the operator to submit a Travel Plan for approval prior to first use of the development. The terms of condition 9 are clear both as to the requisite components of the Travel Plan and the timing of its submission for approval. In effect, incorporation of the measures proposed in the Travel Plan Commitment Statement is stipulated as the necessary minimum in order to discharge the mandatory requirement imposed by the condition, that the operator submit a Travel Plan for approval prior to commencement of operations.

111. I see no obvious difficulty in taking enforcement action to secure compliance with those requirements. The requirement to incorporate the measures proposed in the Travel Plan Commitment Statement in the Travel Plan is stated in clear and precise terms. The deadline for submission of the Travel Plan is stated by reference to a readily ascertainable event. In the event that the operator were to begin to operate the tourist attraction at the quarry without having first submitted a Travel Plan for approval which at least incorporated the measures proposed in the Travel Plan Commitment Statement (March 2016), they would be in breach of condition 9 and liable to enforcement action. Such action might take the form of an enforcement notice issued under section 172 of the 1990 Act. It would also be open to the Defendant to issue a breach of condition notice under section 187A of the 1990 Act. Were the operator to persist in operating the development without having submitted a Travel Plan incorporating the measures proposed in the Travel Plan Commitment Statement for the Defendant's approval, it would be open to the Defendant in addition to enforcement notice to serve a stop notice under section 183 of the 1990 Act.

Conclusion

112. For these reasons, I reject the Claimant's contention that the planning officer's advice to the Committee was materially misleading. The main thrust of the planning officer's advice was that the measures proposed in the Travel Plan Commitment Statement were robust, achievable and their implementation could be secured by condition. For that purpose, she proposed a draft condition, which in its somewhat extended terms was later imposed as condition 9 of the planning permission. On a proper analysis of the terms of condition 9, it does have effect to secure the implementation of the measures proposed in the Travel Plan Commitment Statement. The Travel Plan to be submitted by the operator prior to first use of the development for approval must incorporate those measures. Following approval of the Travel Plan, those measures must be implemented by the operator within 6 months of first use of the development. The development is to be operated in accordance with the approved Travel Plan. Each of those specific requirements of condition 9 is capable of being enforced by the Defendant. On a proper understanding of its terms, condition 9 does enable the Defendant to enforce effective control of operation of the development through securing the implementation of those measures which, on the planning officer's advice, would result in the acceptable operation of the proposed tourist attraction in terms of movement and activity.

113. Given my conclusion, it is unnecessary for me to consider in any detail the Defendant's argument that implementation of the measures proposed in the Travel Plan Commitment Statement would be secured in any event through performance of the planning obligations imposed by the Deed. There was some dispute between the parties as to the effectiveness of the Deed, given that there is some confusion on the face of the Deed as to who is actually bound to perform the planning obligations which it seeks to impose. At the time of writing the Report, the Deed was in draft form. In paragraph 5.33, the planning officer advised that it added further reassurance that the revised Travel Plan was achievable and that the Interested Party was committed to implementation of its proposed measures. In my view, that was a reasonable position for her to take. It is, however, clear from that paragraph of the Report that she relied primarily on the imposition of condition 9 as the basis for securing the implementation of the measures proposed in the Travel Plan Commitment Statement.

114. For these reasons, ground 2 must be rejected.

Ground 3

The Claimant's submissions in summary

115. The Claimant's first contention under this ground is that the Defendant failed to address the impacts of increased traffic resulting from operation of the development on the tranquillity, remoteness and isolation of the Langdale Valley. Mr Brett relied upon the terms of policy 05 of the Local Plan, which identified the impact of development on tranquillity as a material consideration. He also drew attention to the landscape character assessment for the Langdale Valley, which emphasised the valley's strong sense of remoteness, tranquillity and isolation. Policy 05 required the Defendant's determination of the planning application to be guided by the landscape character assessment and those distinctive characteristics of the Langdale Valley. It was submitted that the planning officer had failed to consider or to advise on those impacts

in the Report. That was a material omission which vitiated the Committee's decision to approve the planning application.

116. The Claimant's second contention is that the planning officer's advice to Committee, that the increased traffic movements from operation of the development would not have a detrimental impact on the landscape, was irrational. That advice was based solely on the implementation of the measures proposed in the Travel Plan Commitment Statement. However, it was submitted, it was not in issue that even assuming that those measures proved to be effective in practice, the development would still result is a noticeable increase in vehicular traffic on roads through the Langdale Valley, with inevitable adverse effects on the landscape of the Valley. To advise otherwise was irrational and materially misled the Committee.

117. The Claimant's third contention is that in advising in paragraph 5.38 of the Report that the measures proposed in the Travel Plan Commitment Statement offered as much as an individual developer could reasonably achieve, the planning officer had addressed the wrong question. The relevant question was whether, allowing for the operation of the development in accordance with those measures, the impact on the landscape of the Langdale Valley of the increased traffic and activity resulting from the development was acceptable. For this reason also, it was submitted that the planning officer had given materially misleading advice to the Committee.

Discussion

118. In order to address these contentions, it is necessary to refer to the assessment of the Langdale Valley in the LCA -

"Distinctive Characteristics

Classic, U-shaped glacial, long, narrow valley of Great Langdale, with typical features of headwalls, corries, glacial tarns, hanging valley and truncated spurs. Bowfell and Crinkle Crags and the distinctive skyline of the Langdale Pikes dominate the head of the Langdale valley and provide a powerful sense of enclosure;

…

The three settlements of the area, Elterwater, Chapel Stile and Little Langdale are products of a working industrial landscape. Elterwater with its gunpowder workers housing, Chapel Stile with its green slate quarrying community terraces and church and Little Langdale, a loose group of buildings with strong building evidence of nearby extensive slate quarries;

…

Despite being one of the busier valleys Langdale has a strong sense of isolation, remoteness, contrast and tranquillity, as a result of the dramatic landform and the perceived naturalness of the high, open, fells.

Local Distinctiveness and Sense of Place

The glaciated, U-shaped meandering form of Great Langdale Valley is enclosed by dramatic High Fells, which loom above the pastoral valley floor and provide a strong

sense of containment and isolation, particularly at the valley head. The valley runs from Ambleside in the east, to the steep, dominating and highly distinctive form of the Langdale Pikes in the west, encompassing a network of small, irregular, walled meadows along the valley bottoms and scattered barns, intakes with remnants of wood and veteran trees, and a ring garth wall, which contrast strongly with the bare rock and bracken of the dramatic higher Fells. Unusually for a large glaciated valley, it does not contain a lake, though the classic corrie tarn of Stickle Tarn tucked below the bulk of Pavey Ark is a striking glaciation feature. Little Langdale … has a smaller-scale and more intimate feel however there is a very strong sense of tranquillity and isolation within both, especially at the valley heads".

119. In paragraphs 5.51 to 5.53 of the Report, the planning officer provided the Committee with a detailed and accurate summary of that character assessment. She reminded members that the Langdale Valley was assessed to have a strong sense of isolation, remoteness, contrast and tranquillity, particularly towards the head of the valley. Its character was strongly rural; its landscape value was high. The valley was particularly valued by people for its scenic beauty and cultural landscape, for its public rights of way for recreation and wider landscape views. It is reasonable to assume that members of the Committee will have had at least some familiarity with these landscape characteristics and qualities of the Langdale Valley, given its acknowledged importance as a much-loved area of the Lake District.

120. In paragraph 5.61 of the Report, the planning officer gave her assessment of the impact on the landscape of the Langdale Valley of the increase in traffic on local roads resulting from operation of the development. For the reasons given in that paragraph, her planning judgment was that the development would not have a detrimental impact on the landscape. That planning judgment informed her overall conclusion in paragraph 5.62 that the development would not result in unacceptable impacts on the character and appearance of the landscape.

121. In essence, the Claimant's argument is that since in those two paragraphs of the Report, the planning officer did not refer in terms to the impact of the development on the tranquillity, isolation or remoteness of the landscape of the Langdale Valley, she is to be taken to have failed to consider that matter. There is, however, no substance in that argument. The adequacy of the planning officer's assessment of the impact of the development on the landscape of the Langdale Valley must be considered as a whole, rather than by picking out particular paragraphs in isolation.

122. It is clear that the planning officer properly drew the Committee's attention to the relevance of tranquillity and to the significance given by policy 05 of the Local Plan to the assessment of the particular qualities and sensitivities of the Langdale Valley in the LCA. She summarised that assessment in the Report. Her summary was accurate and complete. It referred to the strong sense of remoteness, isolation and tranquillity as key characteristics of the Langdale Valley. It will also be recalled that the planning officer had drawn the Committee's attention to objectors' concerns over the impact of the development on the valley landscape by virtue of increased traffic and movement.

123. In advising the Committee in paragraph 5.61 of the Report that she did not consider that the increased traffic associated with the development would have a detrimental impact on the Lake District landscape, acknowledging as she did the extraordinary beauty and harmony of that landscape, the planning officer had well in mind those particular

characteristics of the Langdale Valley to which she had referred a few paragraphs previously. Contrary to Mr Brett's submission, on a fair and proper reading of this part of the Report, there is no doubt that the planning officer did take into account and reach a planning judgment as to the impact of increased traffic and movement resulting from the development on the landscape of the Langdale Valley, recognising as she did that the valley was characterised by its by its tranquillity, remoteness and sense of isolation. She was not required to extend an already lengthy report by spelling out again that the landscape hereabouts was so characterised. Consistent with authority, it is to be assumed that the Committee accepted the planning officer's judgment.

124. The Claimant's second contention under this ground is founded on a misunderstanding of the planning officer's assessment in paragraph 5.61 of the Report. The measures proposed in the Travel Plan Commitment Statement were plainly relevant to the question whether the increased traffic and movement associated with the development would harm the landscape. However, it is incorrect to say that the planning officer relied solely on the implementation of those measures as the basis for her judgment that increased traffic and movement would not have a detrimental impact on the landscape of the Langdale Valley. She relied upon a number of matters in paragraph 5.61 of the Report, including the fact that visitor numbers would be limited by virtue of the finite capacity of the caverns at the quarry in which the viewing platforms and zip-wires would be installed.

125. The planning officer had stated the predicted annual number of visitors to the development and the seasonally adjusted daily traffic numbers earlier in the Report. In paragraph 5.56 of the Report, she accepted that the increase in traffic would be noticeable both on site and in the Langdale Valley. She recommended the imposition of a condition capping the number of visitors using the cavern explorer route to 294 per day. Condition 17 imposed that cap, the stated reason for doing so being to control and manage likely movements to the premises and within the locality to avoid harmful changes to the character and appearance of the area, in accordance with policy 05 of the Local Plan.

126. Whether the noticeable increase in traffic and movement, considered in conjunction with the measures proposed in the Travel Plan Commitment Statement to encourage more sustainable modes of transport and the reassurance of the daily cap on visitor numbers, would result in a harmful impact on the landscape of the Langdale Valley was a question of planning judgment. I do not accept the Claimant's contention that the planning officer's answer to that question in paragraph 5.61 of the Report is an irrational exercise of planning judgment. I find it impossible to conclude that the reasons given in paragraph 5.61, read in the context of the planning officer's overall assessment of the landscape impacts of the development and its operation, fail to provide a rational basis for that judgment.

127. The Claimant's third contention under this ground lacks merit. It is clear from paragraphs 5.38 and 5.61 of the Report that planning officer recognised the need to assess and form a judgment whether the impact of the increased traffic and activity resulting from the development was acceptable in impacts, particularly on the landscape of the Langdale Valley. It is, moreover, clear that in making that assessment, the planning officer asked herself whether the measures proposed in the Travel Plan Commitment Statement to promote modal shift to more sustainable modes of transport than the private car were both robust and achievable. In short, the planning officer

examined those measures within the analytical framework set by policy 21 of the Local Plan, in accordance with the guidance given by paragraph 3.18.05 of the Local Plan.

128. Policy 21 offers policy support to proposals which seek to broaden and encourage the use of sustainable transport modes for visitors; and thereby to reduce the need to travel by private car. It is obvious that in assessing whether a proposed tourism development has sought to fulfil that policy objective, it may be relevant to form a judgment whether the developer has done all that they reasonably can in the circumstances of the case to bring forward practical measures to encourage visitors to travel to the proposed tourist attraction other than by private car.

Conclusion

129. Ground 3 is rejected.

Disposal

130. I am grateful as always to Mr Brett and Mr Westaway for the clarity and succinctness of their written and oral submissions, and to those supporting them for the well-presented documentation in this case. The claim is dismissed.