

Case Name: *Friends of the Lake District v Lake District National Park Authority* [2025] EWHC 2630

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Commentary: Mr Justice Mould dismissed an application for judicial review of the decision of the Lake District National Park Authority ('the Defendant') to grant planning permission for the use of slate caverns at Elterwater Quarry for heritage tourism ('the Development').

Friends of the Lake District ('the Claimant') obtained permission on three grounds. Under Ground 1, the Claimant contended that the Defendant's decision had been vitiated by a legally erroneous comment made by a committee member concerning the application of the *Sandford* principle. The twin purposes of National Park legislation are: (a) conserving and enhancing the natural beauty, wildlife and cultural heritage of National Parks, and (b) promoting opportunities for the understanding and enjoyment of the special qualities of National Parks by the public. The *Sandford* principle provides that when making decisions relating to National Parks, authorities must seek to further these purposes, and where it appears that there is a conflict between them, it must attach greater weight to purpose (a). Mould J held that when interpreted in the context of the wider deliberations, the impugned comment did not misapply the *Sandford* principle.

In the course of dismissing an application to amend Ground 1, Mould J also provided useful guidance on the proper interpretation of the *Sandford* principle. The principle does not prescribe that purpose (a) *must* prevail where a conflict between the purposes arises. Rather, it requires that a tilted balance be applied to an otherwise evaluative exercise.

Under Ground 2, the Claimant submitted that the planning officer had materially misled the Defendant when advising that a proposed condition could effectively control harms arising from an increase in traffic caused by the Development. Mould J held that, properly interpreted, the drafting of the condition was not defective in the manner suggested. Consequently, the planning officer's advice was accurate.

Under Ground 3, the Claimant alleged that the planning officer had failed to properly consider, rationally evaluate, or ask themselves the correct question in relation to the potential impact of the Development on the tranquillity and remoteness of the Langsdale Valley. Reading the planning officer's report as a whole, Mould J concluded that the planning officer did not fall into the legal errors alleged.

The Facts

The Development, proposed by Burlington Slate Limited ('the Interested Party'), would involve the introduction of viewing platforms and ziplines, the conversion of existing buildings, and the provision of car and coach parking. The site would continue to be used for quarrying operations. Access to the quarry from the village of Elterwater is gained via a single-track road.

The Claimant is a charitable organisation which promotes the protection and conservation of the landscape and natural beauty of the Lake District. A key concern for the Claimant was the potential for landscape and appearance harms caused by an increase in the number of vehicles travelling to and from the site of the Development.

Grounds of Appeal

The Claimant obtained permission on the following grounds:

1. The Defendant's decision was vitiated by the legally erroneous approach of a senior member of the committee, Tiffany Hunt, 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. The Defendant's Development Control Committee ('the 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 Committee took account of an immaterial consideration when they resolved to grant planning permission.
3. The 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.

In addition, the Claimant sought 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.

Ground 1

Section 5 of the 1949 Act defines two purposes for National Park legislation: (a) conserving and enhancing the natural beauty, wildlife and cultural heritage of National Parks, and (b) promoting opportunities for the understanding and enjoyment of the special qualities of National Parks by the public. The *Sandford* principle, enacted by section 11A(1A) of the 1949 Act, provides that when an authority exercises its functions in relation to a National Park, it must seek to further the foregoing purposes, and where it 'appears that there is a conflict between those purposes', it must 'attach greater weight' to purpose (a).

In *R (Stubbs) v Lake District National Park Authority* [2021] PTSR 261 at [39] - [40], Dove J held that the *Sandford* principle is not engaged by any conflict or friction between the two

purposes. Rather, it is a means of breaking the deadlock where an acute or irreconcilable tension has arisen.

Ms Hunt took the view that the Development should be approved. During the latter stages of the Committee's deliberations, she opined that – in addition to promoting purpose (b) – the Development '*arguably ... enhances the cultural heritage by providing access to a site that's never been open to the public before*'. Three members voted against granting permission. Three members, including the Chair, voted in favour. As the Chair held the casting vote, the Development was approved.

The Claimant submitted that Ms Hunt's comment was legally erroneous because the provision of public access to heritage assets can only be lawfully attributed to purpose (b); it cannot be relied upon as evidence of the promotion of both purposes. In light of her seniority, the timing of her intervention, and the fine balance of the vote, Ms Hunt's comment was said to have been material to the Defendant's decision.

Mould J dismissed this argument. Given that harm to cultural heritage had been identified by the planning officer as the tension which engaged the *Sandford* principle, Mould J understood Ms Hunt to have meant that the degree of conflict between the two purposes should not be overstated, because it was at least arguable that there was a degree of harmony between offering the opportunity for the public to appreciate a feature of the National Park's cultural heritage at close hand, and conserving and enhancing that cultural heritage.

Read in context, Ms Hunt's comment therefore contained no error of law or irrationality. Mould J emphasised the fact that several other members of the Committee, including the Chair, had accurately articulated the *Sandford* principle immediately prior to Ms Hunt's comment. Ms Hunt did not quarrel with these statements, nor sought to persuade the Committee that the principle was not engaged by a conflict between the purposes. Additionally, in light of the correct formulation of the *Sandford* principle by multiple members and within the planning officer's report, Mould J held that it was fanciful to suggest that Ms Hunt's comment had caused the Committee to misunderstand or misapply the principle when reaching its decision.

Ground 1A

Permission to proceed with this judicial review was granted on 25 July 2024. On 8 April 2025 – three weeks prior to the full hearing – the Claimant filed an application to amend its grounds of claim. No good reason was offered to justify the 'obvious lateness' of this application. Mould J further rejected the Claimant's submission that the Defendant would suffer no prejudice. He accepted that the amendment raised wider questions concerning the Defendant's approach to applying the *Sandford* principle, which the Defendant may have wished to address in evidence.

Mould J nevertheless explained why, had he allowed the amendment, he would also have rejected this ground of appeal. Contrary to the Claimant's submission, the *Sandford*

principle does not provide that where the principle is engaged, purpose (a) must necessarily prevail. In Mould J's view, the language of section 11A(1A) obliges the authority to attach 'greater weight' to purpose (a). Parliament did not predetermine the outcome; it simply applied a titrated balance to an evaluative exercise.

Ground 2

In its planning application, the Interested Party submitted traffic management proposals, which it committed to via a unilateral undertaking ('the Travel Plan Commitment'). The planning officer recommended the approval of the Development on the basis that the Travel Plan Commitment measures were secured by a condition. In particular, the planning officer advised that this could be achieved by condition 9.

The Claimant asserted that the drafting of condition 9 was defective. Although it required a travel plan to be submitted for approval, it allegedly did not control the position which would occur if the travel plan was found to be unacceptable. It was suggested that irrespective of the Defendant rejecting the proposed plan, the Interested Party would still have satisfied the condition, freeing it to implement the Development. Given the critical importance to the Defendant's decision-making of effective control of landscape and appearance harms arising from increased traffic, the planning officer's advice that such harms could be effectively controlled by the condition was said to have been materially misleading.

Mould J did not consider the drafting of condition 9 to be defective in the manner alleged. On a proper construction, the condition did not merely require the operator to submit any travel plan for the Defendant's approval. Rather, it imposed a requirement to incorporate into that proposed plan *'the measures as stated in the submitted Travel Plan Commitment statement (March 2024)'*. The submission for approval of a plan which failed to incorporate those measures would be in breach of the condition, potentially precipitating enforcement proceedings. Consequently, the Defendant was not materially misled by the planning officer's advice. The Defendant accordingly did not rely on an immaterial consideration when granting the permission.

Ground 3

The Claimant made three related submissions under Ground 3. First, it submitted that the planning officer failed to consider or advise on the impacts of increased traffic on the tranquillity, remoteness and isolation of the Langdale Valley. The Claimant relied on local plan policies and the Landscape Character Assessment (LCA), both of which emphasised the importance of these characteristics. Second, it suggested that the planning officer's advice that increased traffic would not have a detrimental impact on the landscape was irrational. Third, it contended that the planning officer asked themselves the wrong question when advising that the Travel Plan Commitment statement offered as much mitigation as an individual developer could reasonably achieve; the correct question was whether, if the development proceeded in accordance with such traffic control measures, the landscape impacts would be acceptable.

Mould J rejected each of these submissions. Applying the principle that planning officers' reports must be read as a whole (*R (Mansell) v Tonbridge and Malling BC* [2019] PTSR 1452 at [42]), he held that there was no substance in the submission that, because the planning officer did not expressly mention the tranquillity and remoteness of the Langdale Valley in the report's concluding paragraphs, she had failed to consider this matter. Elsewhere in the report, the planning officer accurately summarised the significance of the local plan policy and the LCA in relation to these harms. She was not required to recapitulate this analysis in her conclusion.

The Claimant's second submission was held to be founded on the misapprehension that the planning officer had solely relied on the Travel Plan Commitment when reaching her conclusion that increased traffic would not detrimentally impact the landscape of the Langdale Valley. In reality, she weighed a range of factual matters alongside the Travel Plan Commitment. Mould J held that this constituted a rational basis for the assessment of landscape harm.

Mould J further considered that it was clear that the planning officer recognised the need to assess and form a judgment on whether the landscape impacts of the Development were acceptable. The impugned comment was held to be a relevant question to ask in the context of the language and objectives of a specific local plan policy concerning sustainable transport, which did not detract from the overall propriety of her approach.

Case summary prepared by Archie Hunter