

Neutral Citation Number: [2013] EWHC 4109 (Admin)

Case No: CO/8172/2012

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

20 December 2013

B e f o r e :

HIS HONOUR JUDGE BIRTLES
Sitting as a Deputy High Court Judge

Between:

The Queen
on the application of
PHILIP JOHN EVANS

Claimant

- and -

CORNWALL COUNCIL

Defendant

- and -

(1) KEVIN JOHNSON
(2) KEVERAL SUSTAINABLE LAND
HOLDINGS LTD
(3) WILLIAM KNIGHT
(4) ONE COMMUNITY LIMITED

**Interested
Parties**

Mr Charles Mynors (instructed by Messrs Stephens Scown LLP) for the Claimant
Mr Edward Helme (instructed by Cornwall Council Legal Services) for the Defendant
Hearing date: 12 November 2013

HHJ Birtles:

Introduction

1. Mr Evans is the owner of Keveral Barton House, St Martins, Looe, Cornwall PL13 1PA. He seeks judicial review of the decision made by Cornwall Council in response to notifications made under condition A.2(2) of Class A of Part 6 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 relating to the proposed erection of agricultural buildings at Keveral Farm, namely
 - i) two polytunnels (received 29 March 2012: reference PA12/03077); and
 - ii) a mushroom barn (received on 12 April 2012: reference PA12/03389).
2. The Claimant was represented by Mr Charles Mynors of counsel. The Defendant was represented by Mr Ned Helme of counsel. I am grateful to both counsel for their written and oral submissions. The Interested Parties did not appear but submitted written representations with attachments.
3. The hearing took place on 12 November 2013. At the conclusion of the hearing I reserved judgement.

The factual background

4. Keveral Barton House is an old building set in the countryside. It is of unassuming appearance now, but dates back to the 16th century, and is all that remains of what was once a significantly larger complex. It was listed by the Secretary of State in 1964 as a building of special architectural or historic interest at grade II*, making it one of the most important 2% of non-ecclesiastical listed buildings in the country. The list description is at trial bundle pages 81-84.
5. Keveral Farm comprises a group of buildings that have grown up over several centuries adjacent to Keveral Barton. Access to the farm is obtained from a small lane running north from the junction with Looe Hill at Penhale Farm (“the Lane”) along a bridleway. As is shown on the relevant office copy entries,
 - i) the Farm itself, and almost all of the bridleway, is owned by One Community Limited under title CL122978;
 - ii) the fields to the east of the Farm (title CL124069) and to the north of the Farm (title CL157638) are owned by Keveral Sustainable Land Holdings.
6. All or part of this land is subject to an agricultural tenancy owned by Keveral Farmers Limited. The three organisations are based at the Farm. There is a useful layout plan at trial bundle page 104.
7. Prior to the present proposals, there have been a number of proposals for works at Keveral Farm. Several of them have resulted in appeals or litigation, in each case centring on (or at least considering) the question of whether the particular works would affect the setting of Keveral Barton House. Although the Claimant places some reliance on this history I do not regard it as relevant to the issue which I have to decide in this particular case.
8. The application for prior notification for One Community Limited was submitted by Mr William Knight on 9 April 2012. It is for a new mushroom barn: trial bundle pages 152-154. In answer to the question “would the proposed development affect an ancient monument, archaeological site or listed building or would it be within a Site of Special Scientific Interest or

a local nature reserve?” Mr Knight has said no. The application has a plan attached to it: trial bundle page 155.

9. The second application was made by Mr Kevin Johnson on behalf of Keveral Sustainable Land Holdings and was for the two polytunnels. The application form is at trial bundle page 156-158 and in answer to the same question which I have set out above, Mr Johnson has also answered no but in the box which follows for the answer yes, he has said this:

“The closest polytunnel will be 70m from a listed building, but it will not be visible from the listed building.”

Again a site plan follows at trial bundle page 160.

10. The evidence in respect of the Council’s procedure followed in this case is set out in the witness statements of Ms Julie Mitchell dated 24 August 2012: trial bundle pages 161-168 and 4 December 2012: trial bundle pages 169-176. Ms Mitchell is a Development Officer within the Defendant’s Planning and Regeneration Service.

11. In her first witness statement she says this:

- “5. I was the case officer who assessed the two prior notification applications for the proposed agricultural development comprising the construction of two polytunnels and construction of an agricultural building which were respectively validated by the Council on 3 April 2012 and 10 April 2012. The validation of the applications was carried out by development support officers whose role is to check that applications meet the requirements of the Council’s published “Validation requirements for non householder applications”.
6. On receipt of the applications I was aware that the site had a complex planning history. I therefore sought to familiarise myself with the site by reviewing the planning history, which included committee reports and photographs of the site relating to a previous full planning application for farm-wide development, and discussed the background with the case officer who dealt with the previous application. As a result of my research of the site and its planning history I was aware of the Claimant’s involvement in a previous judicial review and in particular his concerns relating to the setting of this Grade II* Listed Building, Keveral Barton House.
7. The applications were submitted by the Interested Parties as required by Part 6 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, which grants permitted development rights for a range of agricultural buildings and development, subject to all relevant criteria being met. Based on guidance provided in Annex E to PPG7, it is my understanding that the basis for the prior notification procedure is firstly to verify that the proposal is permitted development and secondly to determine whether there is a need to formally assess the siting, design and external appearance having regard to the significance of its likely impact on the surroundings.
8. I firstly assessed both proposals against the criteria of the GPDO and was fully satisfied that both proposals, individually and cumulatively, benefitted from permitted development rights. I set out the reasons for this in the officer report for both applications. I remain of the opinion that both proposals are permitted development.
9. I secondly assessed the likely impacts of the proposed developments on the surroundings with reference to the details provided within the submitted applications forms and plan in full knowledge of the relationship of the proposed development to existing buildings

within Keveral Farm and the adjacent Keveral Barton House and recorded archaeological interests, including the Corn Mill forming part of an existing agricultural building.

10. In relation to application PA12/03389 for the construction of an agricultural building, it was very clear to me that the scale of the proposed agricultural building (mushroom barn) would form a minor development in the context of the range of larger buildings against which it would be seen. It was also very clear to me that the positioning of an existing unlisted stone building between the site of the proposed building and Keveral Barton House would mean that the setting of the Grade II* building would be unaffected by the proposal. I did not consider that the positioning of a lightweight timber framed structure on land adjacent to the recorded former Corn Mill would have any reasonable likelihood of affecting any known archaeological interests. I concluded that the impact of the proposed development would not cause any significant impacts to justify the Council exercising control over development which would otherwise be permitted development. I summarised my assessment in a short statement in the officer report in which the reference to the “surrounding area” included the listed building and archaeological features.
 11. In relation to application PA12/03077 for the construction to two polytunnels, one of the polytunnels was to replace an existing polytunnel and the other was to be an additional polytunnel. It was evident to me that the site of the proposed development was sufficiently divorced from Keveral Barton House so that the setting of the Grade II* Listed Building would be unaffected. I did not consider that the positioning of polytunnels on agricultural land would have any reasonable likelihood of affecting any known archaeological interests due to the nature of development which would not necessitate foundations. In my opinion, the nature and scale of the proposed development was unlikely to have any demonstrable impact on the surrounding landscape in the context of the existing land use. I concluded that the impact of the proposed development would not cause any significant impacts to justify the Council exercising control over development which would otherwise be permitted development. I summarised my assessment in a short statement in the officer report in which the reference to the “surrounding area” included the listed building and archaeological features. I attach 5 photographs (JM1-5) which show the buildings at Keveral Farm and setting of Keveral Barton House taken during the period 2008 to 2011.
 12. Based on the advice contained in Annex E to PPG7, it is my understanding that, provided all the requirements of the GPDO are met, the principle of whether the development should be permitted is not for consideration. The prior notification determination procedure provides the local planning authority with a means of regulating only the siting, design and external appearance of agricultural development for which full planning permission is not required. It is only in cases where a specific proposal is likely to have a significant impact on its surroundings that the formal submission of details for approval be considered necessary. In neither case did I find that the likely impacts would be significant. On this basis I made the recommendation to my line manager that both proposals benefitted from permitted development rights and that neither would necessitate prior approval of siting, design and external appearance.”
12. In her second witness statement Ms Mitchell says this:
- “3. In my First Statement at paragraph 6 I explained that I researched the site and its planning history. As part of this research exercise I reviewed the Council’s Intranet mapping system to identify and verify all relevant constraints using the historic and natural environment data layers. The data layers include landscape designations, nature conservation sites and known historical and archaeological interests which are all material to the consideration of the prior notification applications. As stated at paragraph

9 of my First Statement I confirm that I made my assessment of the significance of the proposed developments with knowledge of the proximity to the Grade II* Listed Building and known sites and monuments records. For the reasons set out in my First Statement at paragraphs 10 and 11, these factors did not form the main issues in the determination of the proposals and therefore I made no specific reference to them in the officer reports.”

13. The officer reports referred to in paragraphs 10 and 11 of Ms Mitchell’s first witness statement are at trial bundle pages 171-176. In his skeleton argument Mr Mynors particularly points out that in relation to the report of the proposed polytunnels no mention is made of the site being close to a Grade II* listed building, in an area of any archaeological significance, or mentioned in the Cornwall Historic Environment Record (HER). He also points out that the report does not mention PPS5, Planning for the Historic Environment (March 2010). Nor is there any mention of the National Planning Policy Framework, which replaced all planning policy statements and planning policy guidance notes on 27 March 2012. Nor does the report refer to the guidance on The Setting of Heritage Assets, published by English Heritage in October 2001.
14. Mr Mynors also points out that the report summarises the provisions of Class A of Part 6 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 and makes various observations. However he points out that no reference is made to whether or not the land in question is close to or affects the setting of any listed building, scheduled monument or other area of archaeological interest.
15. The report on the mushroom building is in virtually identical terms and makes no reference to the setting of any listed building or archaeological interest.
16. The Defendant in both cases decided not to require the applicant to obtain prior approval for the siting, design and external appearance of the buildings.

Legal and policy framework

Prior notification procedure

17. Section 57(1) of the Town and Country Planning Act 1990 (“the TCPA”) provides that (subject to other provisions of that section which are not relevant for present purposes) planning permission is required for the carrying out of any development of land. The meaning of “development” is given for this and other purposes by section 55.
18. Section 58 provides that planning permission may be granted by various methods including (under section 58(1)(a)) by a development order.
19. General provision for development orders is made by section 59. By section 59(2)(a) a development order may itself grant planning permission for development specified in the order or for development of any class specified.
20. Section 60 provides, so far as material:

“60 Permission granted by development order

- (1) Planning permission granted by a development order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order.
- (2) Without prejudice to the generality of subsection (1), where planning permission is granted by a development order for the erection, extension or alteration of any buildings,

the order may require the approval of the local planning authority to be obtained with respect to the design or external appearance of the buildings.

(3) [omitted]

(4) [omitted]”

21. By section 78(1)(c) where (among other things) a local authority refuses an application for any approval required under a development order the applicant may by notice appeal to the Secretary of State. Section 78(2) affords a route of appeal where a local authority has not determined such an application within timescales prescribed by a development order.
22. The principal development order is the Town and Country Planning (General Permitted Development) Order 1995 (“the GPDO”). The first two provisions of Article 3 provide as follows:
 - “(1) Subject to the provisions of this Order and regulations 60 to 63 of the Conservation (Natural Habitats, &c) Regulations 1994 (general development orders), planning permission is hereby granted for the classes of development described as permitted development in Schedule 2.
 - (2) Any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in Schedule 2.”
23. The relevant Part of Schedule 2 for present purposes is Part 6 which provides so far as material for present purposes:

“Class A

Development on Units of 5 Hectares or More

Permitted development

- A The carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of –
- (a) works for the erection, extension or alteration of a building; or
 - (b) any excavation or engineering operations,
- which are reasonably necessary for the purposes of agriculture within that unit.

Development not permitted

[Omitted]

Conditions

A2

(1) [Omitted]

(2) Subject to paragraph (3), development consisting of –

- (a) the erection, extension or alteration of a building;

(b)-(d) [Omitted]

is permitted by Class A subject to the following conditions –

- (i) the developer shall, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required to the siting, design and external appearance of the building, the siting and means of construction of the private way, the siting of the excavation or deposit or the siting and appearance of the tank, as the case may be;
- (ii) the application shall be accompanied by a written description of the proposed development and of the materials to be used and a plan indicating the site together with any fee required to be paid;
- (iii) the development shall not be begun before the occurrence of one of the following -
 - (aa) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;
 - (bb) where the local planning authority give the applicant notice within 28 days following the date of receiving his application of their determination that such prior approval is required, the giving of such approval; or
 - (cc) the expiry of 28 days following the date on which the application was received by the local planning authority without the local planning authority making any determination as to whether such approval is required or notifying the applicant of their determination;
- (iv)
 - (aa) where the local planning authority give the applicant notice that such prior approval is required the applicant shall display a site notice by site display on or near the land on which the proposed development is to be carried out, leaving the notice in position for not less than 21 days in the period of 28 days from the date on which the local planning authority gave the notice to the applicant;
 - (bb) where the site notice is, without any fault or intention of the applicant, removed, obscured or defaced before the period of 21 days referred to in sub-paragraph (aa) has elapsed, he shall be treated as having complied with the requirements of that sub-paragraph if he has taken reasonable steps for protection of the notice and, if need be, its replacement;
- (v) the development shall, except to the extent that the local planning authority otherwise agree in writing, be carried out-
 - (aa) where prior approval is required, in accordance with the details approved;
 - (bb) where prior approval is not required, in accordance with the details submitted with the application; and
- (vi) the development shall be carried out-
 - (aa) where approval has been given by the local planning authority, within a period of five years from the date on which approval was given;

- (bb) in any other case, within a period of five years from the date on which the local planning authority were given the information referred to in subparagraph (d)(ii).

[Remainder of Schedule 2 omitted]”

24. Where a local planning authority gives an applicant notice that prior approval is required, it has eight weeks or such longer period as may be agreed with the applicant in writing to determine whether to give such approval (see Article 30 of the Town and Country Planning (Development Management Procedure (England) Order 2010).
25. In a prior approval case, where the local planning authority gives a favourable response to the application within the prescribed timescales, the planning permission granted by the GPDO “accrues or crystallises” at that stage: see *R (Orange PCS Ltd) v Islington LBC* [2006] EWCA Civ 157 at [28].
26. Where a local planning authority does not respond to an application for a determination as to whether prior approval will be required within the prescribed 28 day period, the planning permission becomes effective at the expiry of that period: see *Murrell v Secretary of State for Communities and Local Government* [2010] EWCA Civ 1367; *R v Staffordshire Moorlands DC ex parte Bartlam* (1999) 77 P&CR 210 *R (Nunn) v First Secretary of State & T-Mobile (UK) Ltd* [2005] EWCA Civ 101.
27. A local resident may in an appropriate case bring judicial review proceedings seeking to challenge a decision that prior approval is not required: *R (Heather Richards) v South Bucks DC* [2004] EWHC 2145 (Admin). Breach of the local planning authority’s duties under the GPDO does not infect the validity of a planning permission granted by the GPDO. However, a local resident may in an appropriate case be entitled to relief from the Court if he has suffered prejudice as a result of an irrational decision (see *Heather Richards* at [17] and [23]-[24]).
28. It is important to recognise that the procedure is a “summary” one in which any report of a local planning authority’s reasons “should not be treated as if it were a full account of all that was considered or needed to be considered in determining that short question as to whether or not the matter needed a fuller procedure than the mere acceptance of the effect of the permission granted by the [GPDO]” (see *Heather Richards* at [27]-[28]).
29. Annex E to Planning Policy Guidance Note 7 (“PPG7”) provides guidance on permitted development rights for agriculture and forestry. It remains extant, although the remainder of PPG7 and its successor PPS7 have been cancelled. Annex E is a material consideration for a decision-maker considering whether prior approval is required: see *Murrell* at [9].
30. Guidance on the determination procedure under Part 6 of Schedule 2 to the GPDO is given under paragraphs E12-E35 of Annex E. Paragraphs E15 and E16 provide as follows:
 - “E15. Provided all the General Permitted Development Order requirements are met, the principle of whether the development should be permitted is not for consideration, and only in cases where the local planning authority considers that a specific proposal is likely to have a significant impact on its surroundings would the Secretary of State consider it necessary for the authority to require the formal submission of details for approval. By no means all the development proposals notified under the Order will have such an impact.
 - E16. In operating these controls as they relate to genuine permitted development, local authorities should always have full regard to the operational needs of the agricultural and forestry industries; to the need to avoid imposing any unnecessary or excessively costly

requirements; and to the normal considerations of reasonableness. However, they will also need to consider the effect of the development on the landscape in terms of visual amenity and the desirability of preserving ancient monuments and their settings, and sites of recognised nature conservation value. They should weigh these two sets of considerations. Long term conservation objectives will often be served best by ensuring that economic activity, including farming and forestry which are prominent in the rural landscape, is able to function successfully.”

31. Guidance on handling applications for determination of whether prior approval will be required and on handling any subsequent submissions of details for approval is provided by paragraphs E17-E21. Paragraphs E18 and E21 provide as follows:

“E18. The Secretary of State attaches great importance to the prompt and efficient handling of applications for determination and of any subsequent submissions of details for approval under the provisions of the General Permitted Development Order. Undue delays can have serious consequences for agricultural and forestry businesses, which are more dependent than most on seasonal and market considerations. The procedures adopted by authorities should be straightforward, simple, and easily understood. Delegation of decisions to officers will help to achieve prompt and efficient handling, and should be extended as far as possible. Authorities should use their discretion over consulting parish councils and other groups about particular proposals, having regard to the need to reach decisions within the required timescales. Requests for more time from consultees should not be used as a reason for requiring the submission of details.

...

E21. Planning authorities should generally be able to deal with applications on the basis of their experience and the information provided. Where authorities do not have the necessary expertise to consider the operational requirements of the agricultural or forestry enterprise, they may need to seek a technical appraisal. Where this is necessary they should aim to do this within the 28 day period, and not simply call for details on a precautionary basis. Extending the decision period may hamper business operations unreasonably.”

32. Paragraphs E22 and E23 provide guidance on the scope of the controls provided under Part 6 of Schedule 2 to the GPDO. Paragraph E22 explains:

“The arrangements do not impose full planning controls over the developments to which they apply – those developments remain “permitted development” under the General Permitted Development Order. The principle of development will not be relevant providing the Order conditions are satisfied, nor will other planning issues. When details are submitted for approval under the terms of the Order, the objective should be to consider the effect of the development upon the landscape in terms of visual amenity, as well as the desirability of preserving ancient monuments and their settings, known archaeological sites, listed buildings and their settings, and sites of recognised nature conservation value (i.e. Sites of Special Scientific Interest and Local Nature Reserves). Details should be regarded in much the same light as applications for approval of reserved matters following the grant of outline planning permission. Subject to the normal criteria governing the use of conditions in planning permission, conditions may be imposed when approval is given. (DOE Circular 11/95 gives further advice in this respect.) Developers required to submit details for approval will have the right of appeal to the Secretary of State if approval is refused or is granted subject to conditions with which they disagree, or if notice of a decision on the details submitted is not given within the period for a decision (normally eight weeks). There is no right of appeal against the decision of a local planning authority to require approval of details. No compensation is payable under section 108 of the

Town and Country Planning Act 1990 if approval of submitted details is withheld by the planning authority.”

33. Paragraph E24 to E35 then go on to provide specific guidance on siting, design and appearance.

Archaeological sites and listed buildings

34. On an application for a determination as to whether prior approval will be required pursuant to Part 6 of Schedule 2 to the GPDO, the desirability of preserving known archaeological sites is a material consideration, as is the desirability of preserving listed buildings and their settings (see Annex E at paragraphs E16 and E22).

The grounds of challenge

35. These are set out in paragraph 2 of the Statement of Facts and Grounds. I take each in turn.

Ground 1: the Defendant erred by failing to take into account a material consideration, namely the impact of the proposed development on the setting of a Grade II* listed building known as Keveral Barton House which is situated adjacent to Keveral Farm.

36. In his written and oral submissions Mr Mynors places considerable weight on PPG7, The Countryside – Environmental Quality and Economic Social Development Annex E which was not replaced by the National Planning Policy Framework in 2012. Mr Mynors places particular reliance on paragraphs E15-16 of Annex E to PPG7. He refers me to *Associated Provincial Picture Houses Limited v Wednesbury Corporation* [1948] 1KB 223 and *In Re Findlay* [1985] AC 318. He also refers me to section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 as well as the Caradon Local Plan (First Alteration) adopted in 2007 policy EV3 and the National Planning Policy Framework (2012) paragraphs 129 and 132. Finally, he refers me to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and *East Northamptonshire District Council v Secretary of State for Communities and Local Government* [2013] EWHC 473 (Admin).
37. However, I agree with Mr Helme that Mr Mynors’ reliance on principles relating to applications for planning permission under section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 are not material considerations of whether prior approval be required. I also agree that the National Planning Policy Framework guidance is inapposite in this context. Furthermore, I also agree that section 66(1) of the Planning (Listing Buildings and Conservation Areas) Act 1990 and the case law concerning it is also inapplicable to the consideration of whether prior approval be required.
38. Mr Mynors makes a number of submissions. First, he submits that in considering a notification under Part 6 of the Town and Country Planning (General Permitted Development) Order 1995 the local planning authority must have full regard to the normal considerations of reasonableness. In particular it will need to consider “the effect of the development on the landscape in terms of visual amenity and the desirability of preserving ancient monuments and their settings, and sites of recognised nature conservation value”: PPG7, Annex E paragraph E16. This includes the consideration of listed buildings and their settings as well as the heritage asset.
39. Second, Mr Mynors submits that any prior notification, just as much as any application for planning permission, affecting the setting of any heritage asset (and therefore Keveral Barton House), should be the subject of very careful consideration to see –

- whether the proposed development will or might affect the significance of that asset;
 - whether any such effect will be harmful;
 - whether any harmful effect can be mitigated – either by redesigning the development or relocating it.
40. Third, Mr Mynors submits that there must be proper reasons and refers me to *South Bucks District Council v Porter (No 2)* [2004] 1 WLR 1953 at paragraph 36 per Lord Brown.
41. In the present case there should have been very careful consideration as to whether the two planning applications would or might affect the architectural, historic and archaeological assets or their setting at Keveral Barton House, including Keveral Farm. There should be specific comment on this. Mr Mynors submits that there is no evidence in the two officer reports that any consideration at all was given to their impact on the significance of Keveral Barton House or its setting, or the archaeological importance of the area generally. Finally, Mr Mynors cautions me against accepting the evidence of Ms Mitchell at face value because he says that it is ex post facto rationalisation and is insufficient because it does not comply with *South Bucks v Porter*.

Ground 2: The Defendant erred by failing to take into account a material consideration, namely the impact of the proposed development on archaeological interests in the area related both to Keveral Barton House and Keveral Farm which are situated adjacent to each other.

42. This ground is very similar to Ground 1. The only difference between them is that the material consideration is different. Ground 2 focuses on archaeological interests in the area rather than on the impact of the proposed development on the setting of Keveral Barton House. Mr Mynors' submissions are the same.
43. Mr Helme makes a series of written and oral submissions contesting those submissions of Mr Mynors. In the event I prefer the submissions of Mr Helme.

Discussion

44. The Claimant asserts [Grounds paragraph 2] that the Officer responsible for the Polytunnel Decision and the Agricultural Building Decision wholly failed to take into account two material considerations, namely: (i) the impact of the proposed development on the setting of Keveral Barton House (Ground 1); and (ii) the impact of the proposed development on archaeological interests in the area (Ground 2).
45. The Council's application forms for both decisions asked specifically for information on whether "the proposed development would affect an ancient monument, archaeological site or listed building" [Claimant's Bundle pages 74 and 79]. The Interested Party's answer on the Polytunnel application specifically drew attention to Keveral Barton House. The issues of the setting of Keveral Barton House and its archaeological interest were therefore clear on the face of the applications.
46. The Annex E guidance is specifically mentioned as the relevant guidance in both of Ms Mitchell's reports on the applications. It is therefore clear from these reports that Ms Mitchell had regard to it. I accept her evidence. The Claimant's core criticism is that the "appraisal/key issues and conclusion" sections of the reports do not specifically mention the setting of Keveral Barton House or archaeological interests. However, the analysis is plainly intended to refer to the impact of the proposed development on the surrounding landscape in the broad sense envisaged by paragraphs E16 and E22 of the Annex E guidance (in which "landscape" includes

the impact on the setting of listed buildings and archaeological interests as well as visual amenity etc.).

47. The assessment of whether prior approval is required under the GPDO is a “summary” one in which any report “should not be treated as if it were a full account of all that was considered or needed to be considered in determining that short question as to whether or not the matter needed a fuller procedure than the mere acceptance of the effect of the permission granted by the [GPDO]” (see *Heather Richards* at [27]-[28]). The Officer’s reports are therefore fully entitled to be set out in brief form and their brevity does not indicate a failure to take account of any material considerations.
48. As the Claimant accepts there is no requirement for a planning authority to provide reasons for a decision as to whether or not to require details of a Part 6 development for prior approval. *South Bucks DC v Porter (No 2)* [2004]1 WLR 1953 is therefore (contrary to the Claimant’s view) not on point since it addresses Inspector’s decisions, in which Rule 19(1) of the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 provides a statutory requirement to give reasons. The *South Bucks* principles may (of course) be extended to other planning decisions in which there is a requirement for reasons to be provided but not to the instant case in which there is no such requirement.
49. Moreover, to the extent that reasons are required, there is nothing to indicate that they must be given at the time of the decision. Very full reasons have now been provided in the Council’s response to the letter before claim and in the Witness Statements of Ms Julie Mitchell in these proceedings. It is clear from these that Ms Mitchell gave full consideration to issues relating to the heritage issues concerning the setting of Keveral Barton House and archaeological interests. She familiarised herself with the relevant planning history [Mitchell first witness statement paragraph 6] and carried out a thorough assessment [Mitchell first witness statement paragraphs 7-12]. As is clear from her Witness Statements, Ms Mitchell has had full regard to the material considerations in the case including the issues relating to the setting of Keveral Barton House and the archaeological interests in the area.
50. As Ms Mitchell did have regard to the setting of Keveral Barton House and archaeological issues, that is the end of the challenge since the Claimant’s Grounds of Claim do not assert that a decision-maker who had regard to those matters could not rationally have concluded that prior approval was not required. Indeed, the decisions that prior approval was not required for these small scale agricultural developments were not only rational but obviously right. The agricultural building is small in scale and located within an existing complex of buildings (as supported by paragraph E27 of Annex E) which shield it from Keveral Barton House. The polytunnels are also small in scale, and divorced from the boundary to the Keveral Barton House grounds by a distance exceeding 70m. Additionally, one of the polytunnels is simply a replacement for a polytunnel which had previously been in position for a number of years.
51. The Claimant refers (Grounds paragraph 39) to the Appeal Decision in relation to the Old Piggery. The Inspector considered the setting of Keveral Barton House at paragraphs 16-19 of his Report and concluded that “subject to some revisions to the roof lights, I consider that the change of use and alterations to the Old Piggery have not adversely affected the setting of the listed building”. In the circumstances, therefore, the Claimant cannot draw any support from a decision relating to development beyond the scope of the GPDO which was nonetheless considered not to adversely affect the setting of Keveral Barton House.
52. The Claimant also refers (Grounds paragraph 40) to the condition relating to archaeological work attached to a grant of conditional planning permission under reference E2/08/00110/FUL (PJE5 pages 47ff) (later quashed by consent – see DBI). The fact of a condition relating to archaeological work in a planning permission involving considerable development is of no relevance to the decisions impugned in this claim, which related to small scale development

which could have no reasonable likelihood of affecting archaeological interests, as explained by Ms Mitchell in paragraphs 10 and 11 of her first witness statement.

Conclusion

53. For these reasons the claim is dismissed. It is therefore not necessary for me to consider the issues of remedy or delay raised by Mr Helme.