



Neutral Citation Number: [2026] EWHC 1543 (Admin)

Case No: AC-2025-LON-003605

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

Royal Courts of Justice
The Strand
WC2A 2LL

Date: 2nd July 2026

Before :

HHJ RUSSEN KC
(sitting as a judge of the High Court)

Between:

THE KING
(on the application of BRONWEN MANBY)
- and -
THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF HACKNEY
-and-
JOSHUA NIEBOER

Claimant

Defendant

Interested Party

Matthew Dale-Harris (instructed by **Richard Buxton Solicitors**) for the **Claimant**
Róisín Finnegan (instructed by **Hackney Legal Services**) for the **Defendant**

Hearing date: 9th June 2026
(draft judgment circulated to the parties on 19th June 2026)

Approved Judgment

This judgment was handed down remotely at 11.40 am on Thursday 2nd July 2026 by circulation to the parties or their representatives by e-mail and by release to The National Archives.

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HHJ RUSSEN KC

HHJ Russen KC:

Introduction

1. This is my judgment on the Claimant’s claim for a judicial review and the quashing of the Defendant’s decision dated 28 August 2025 (“**the Decision**”) to grant planning permission to the Interested Party (“**the IP**”) at 87 Culford Road, Hackney, London N1 4HL (“**the Property**”) for a single storey lower ground floor, upper ground floor rear extension and mansard roof extension.
2. The Claimant lives in the neighbouring property, 89 Culford Road (“**No. 89**”). She had objected to the grant of planning permission.
3. Permission to proceed with the claim was sought by the Claimant on five grounds. On 14 January 2026, Mr Timothy Corner KC, sitting as a deputy High Court judge, considered on the papers that Ground 1 was arguable because:

“... having regard to paragraph 3.14 of the SPD which provides that all extensions should comply with the 45 degree rule, it was arguably necessary for the Defendant to reach a conclusion on whether the 45 degree rule was met in this case”.
4. The judge considered the remaining grounds to be unarguable. The fifth ground had alleged inadequate reasons (including in relation to “**the 45-degree rule**” explained below).

Relevant Policy

5. The judge’s reference to “**the SPD**” is to Residential Extensions and Alterations Supplementary Planning Document (April 2009).
6. The Defendant’s adopted statutory development plan includes the Hackney Local Plan 2033 which was adopted in July 2020.
7. Policy LP2 of the Local Plan provides that all development should be appropriate to its location; that there should be no significant adverse effects; and that amenity impacts will be balanced against the merits of the scheme. Materially for present purposes, the Policy identifies daylight, sunlight, overlooking, privacy and overshadowing as relevant to amenity. The supporting text states that the protection of amenity is a “*key consideration*” and also that it is a “*major consideration*”.
8. Policy LP17 of the Local Plan provides that “... *D. Residential extensions and alterations schemes should have regard to the Residential Extensions and Alterations*”

SPD (and any future updates to this SPD).” The April 2009 SPD remained in force at the date of the Decision.

9. The SPD takes the form of a “detailed design guide” which (per para. 1.8) is “intended for use in the determination of planning applications”. It sets out general design principles and also specific design principles for rear extensions. Within the box entitled “Design Principles: All Rear Extensions”, the SPD provides, at 3.14, that:

“All extensions should comply with the 45 degree rule in order to avoid them becoming overly dominant and visually bulky resulting in overshadowing and loss of amenity for neighbours.”

10. The 45-degree rule is explained in the SPD (in a section addressing ‘Two Storey Rear Extensions’) as follows:

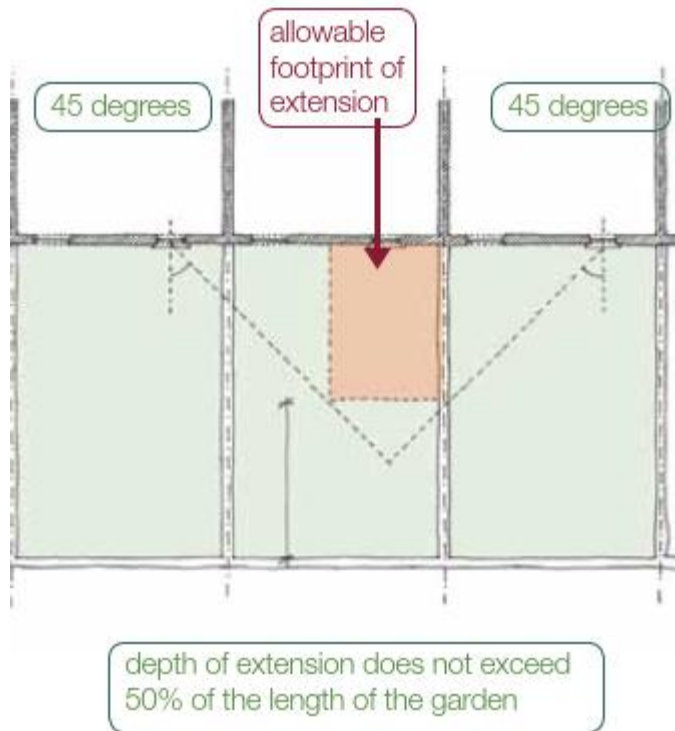
“3.32 The 45 degree rule will be used as a guide in assessing the acceptability of applications for rear extensions to prevent undue loss of daylight to neighbouring properties, to avoid excessive overshadowing of gardens, and preserve a reasonable standard of outlook.

3.33 The 45 degree rule is assessed on both plan and elevation. An extension should not exceed a line taken at 45 degrees from the centre of the nearest ground floor window of a habitable room in an adjoining property.

3.34 Sunlight should also be considered, even where extensions comply with the 45 degree rule, as this can depend on orientation, house layouts, changes of level and the position of adjoining properties.

3.35 These guidelines are general rules. The council will consider the design of each case separately when assessing the effects of an extension.”

11. Adjacent to those paragraphs is a diagram illustrating the effect of the 45-degree rule as follows:



12. The SPD (in a section addressing ‘Single Storey Rear Extensions’) further provides, at paragraph 3.22, that:

“Terraced Houses, including end of terrace: the maximum depth normally acceptable is 3 metres provided a minimum of 50% of the back garden remains. Rear extensions to houses with very small gardens will be assessed on their individual merits. If the neighbouring house is set at a lower level or has a different rear building line then this depth may have to be reduced.”

13. Addressing ‘Larger Rear Extensions’, the SPD also provides that:

“3.38 In some parts of the borough larger ground and first floor rear extensions already exist or have been permitted in recent years. Where an application property immediately adjoins an existing larger rear extension (which must be authorised development), or where there are already a number of such extensions in the immediate vicinity, then slightly larger rear extensions that exceed the general size limits may be considered subject to an assessment of the visual impact and the impact on the amenity of adjoining properties. Applications for larger rear extensions will be considered on a case by case basis subject to the above criteria, and subject always to the retention of a minimum rear garden depth.

3.39 Houses which have a rear projecting element either as part of the original design, or built as a subsequent extension, may have limited capacity to be further extended to the rear.”

The DAS

14. The IP's application for planning permission was made on 3 July 2025 and was supported by drawings and plans and a design and access statement incorporating a heritage statement dated June 2025 (which the parties referred to as "**the DAS**"). The proposal was to significantly extend the lower ground floor to the rear of the Property by a further 2m to accommodate a larger kitchen-diner (making a total of 6m from the original rear facade), to permit an extension to the upper ground floor of 1.5m and to make a series of internal changes and extend into the property's loft.
15. The application records that pre-application advice had been sought from the Defendant and written feedback had been given on 10 April 2025. The DAS was prepared in the light of it. Section 6 of the DAS referred to the pre-application advice. Materially for present purposes, that section included reference to the proposed extension at the upper ground floor having been reduced in depth to 1.5m, and went on to say:

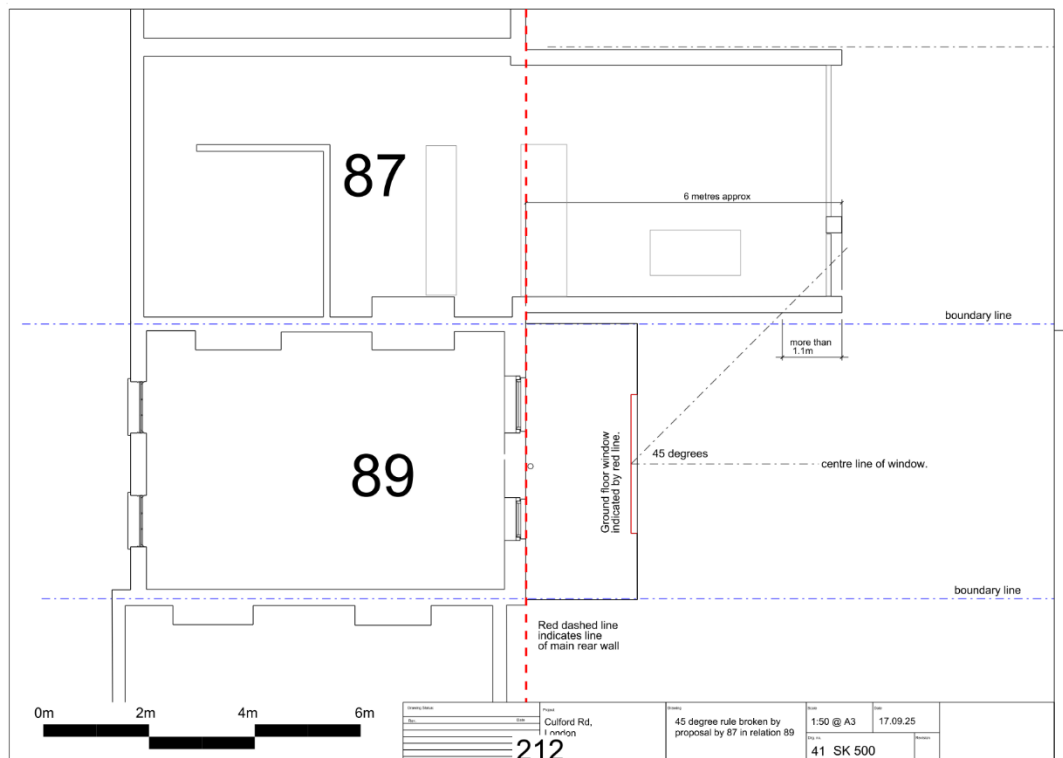
“[t]he reduced depth ensures that the 45 degree rule is met, when considering the centre of the nearest window at 85 Culford Road (currently a staircase rather than a habitable room, however it makes provision for the adjoining owners to change the configuration of the house at a later date).
16. The DAS did not in section 6 expressly address the potential impact of the 45-degree rule in relation to No. 89. Section 9 (headed 'Scale') said:

“The maximum eaves height of the proposed ground floor extension is 2.5m at the boundary with 89 Culford Road, and the rear wall would extend no further than that of the extension of the adjoining property at 85 Culford Road. The proposal is in line with the 45 degree rule for any habitable windows.”
17. The DAS addressed the SPD in detail at section 16. In responding to paragraph 3.33 of the SPD, the DAS stated: “*The proposal complies with the 45 degree rule on both plan and elevation.*” Addressing paragraph 3.38 of the SPD, it stated: “*The proposal mirrors the depth of the authorised rear extension at 85 Culford Road, (planning reference SOUTH/320/96/FP).*”
18. No drawing equivalent to that in the SPD (see paragraph 11 above) was included within the DAS in relation to No. 89. An earlier drawing prepared by the design consultants who co-authored the DAS (No. 5617 – 07, dated January 2025) showed the proposed upper ground floor's compliance with the 45-degree rule in relation to No. 85.
19. The DAS also included three photographs of the front and rear of the Property. Mr Dale-Harris on behalf of the Claimant pointed out that these images came to be reproduced in the Officer's Report. Although No.89 appeared in the photograph of the front of the Property, the camera angle on the photograph of the rear meant that only the rear of the Property and No. 85 were included.

The Claimant's Objection

20. The Claimant objected to the application. In summary, she said:

- (1) the proposed extension would result in an important loss of amenity;
 - (2) it already went beyond the 3m mentioned in paragraph 3.22 of the SPD as there was already a 4m extension totalling 6m, which would be a more serious breach of the 3m 'rule';
 - (3) the proposed extension did not respect the 45-degree rule for No.89;
 - (4) it would set a precedent for the neighbouring property (No. 91) which, if acted upon, would leave No. 89 boxed in between two large extensions;
 - (5) any reliance upon the extension at No. 85, on the other side of the Property, was misplaced since it is different in character (a conservatory) and was consented to in a different planning context 30 years ago;
 - (6) regardless of the purported precedent at no. 85, the extension at the Property would still be incongruous with the rear of no. 89 and
 - (7) the extension at No. 89 is materially different from the one proposed at the Property given their respective scales.
21. The Claimant did not support her third objection with a drawing showing the effect of the 45-degree rule. However, her solicitors' pre-action protocol letter dated 22 September 2025 attached an architectural diagram to show what was said to be "*the clear and unambiguous breach*" of the rule:



22. Ms Finnegan, on behalf of the Defendant, said no reliance should be placed upon this drawing when it was not produced before the Decision was made and had not since been verified in evidence.

The OR

23. The Decision was made by the Planning Officer in the exercise of their delegated powers. The case officer was Ms Zarreen Hadadi. She prepared the Officer's Report and signed it on 26 August 2025 recommending the grant of planning permission subject to conditions ("**the OR**"). The OR was signed off by her Team Leader, Mr S. Dargue, on 28 August 2025.
24. The OR noted the Claimant's objection to the application, based upon the proposed depth and height of the proposed extension and the risk of it setting a precedent, including "[r]espect for the 45 degree rule; impact access to daylight for and the visual amenity currently enjoyed by the kitchen and garden of No. 89."
25. The OR referred to LP2 and LP17, and other relevant policies in the Local Plan, and cited the SPD and the relevant conservation area guidance.
26. The response in the OR to the concerns raised by the Claimant were as follows:

"Officer response: Each application is considered for its own merits. Impact on local character and neighbours outlined below "

.....

"Residential Amenity

Proposals must have regard to policy LP2 'Development and Amenity' in that it should not cause significant harm to the amenity of neighbouring properties. The potential impacts of the proposal on the amenity of neighbouring properties relate to daylight/sunlight, outlook (including bulk and dominance issues) and privacy matters.

The 45 degree rule will be used as a guide in assessing the acceptability of applications for rear extensions to prevent undue loss of daylight to neighbouring properties, to avoid excessive overshadowing of gardens, and preserve a reasonable standard of outlook. The lower ground floor element extends an additional 2m in depth to the existing extension. The height of the roof is sloped at a height of 2.4m on the boundary with no. 89 to 3.27m. Whilst there is an increase in footprint, this is not considered a significantly adverse impact to neighbouring dwellings as it is a similar depth as no. 85 at a lower height on the boundary with no. 89 at single storey level which is not considered over dominant to warrant a reason for refusal.

.....

Given the size and position of the proposed mansard and extensions as well as the nature of the surrounding context, it is considered that the development will not result in an unacceptable detrimental impact upon neighbouring occupiers in terms

of provision of daylight/sunlight or outlook from the site and would not result in unacceptable overbearing impact or sense of enclosure. On this basis it is considered that the proposed development is acceptable in amenity terms.”

.....

Conclusion

“The proposed design, scale and position of the development will respect the character and appearance of the subject building and the surrounding area. As such the proposed development complies with pertinent policies in the Hackney Local Plan 2033 (2020), London Plan (2021), and relevant national planning policies. Accordingly the granting of the planning permission is recommended.”

27. The Decision granted permission subject to conditions. Those included condition 4:

“4 - The Development hereby permitted shall only be carried out and completed strictly in accordance with the submitted plans hereby approved and any subsequent approval of details.

REASON: To ensure that the development hereby permitted is carried out in full accordance with the plans hereby approved.”

28. The approved plans that were listed included the DAS and Drawing No. 5617 – 07 showing compliance with the 45-degree rule in relation to No. 85.

Ms Hadadi’s Witness Statement

29. When the Claim was issued, the Claimant advanced her Ground 1 on alternative bases. The first was that, if the OR determined that the 45-degree rule was met in relation to No. 89, then that was a mistake of fact and an actionable error of law. The second was that, if the OR preceded without determining that the 45-degree rule was complied with, then that was a failure to take account of a material consideration and an error of law. The third was that, if the OR preceded on the basis that the 45-degree rule was not complied with, then that also revealed an error of law.
30. In response to the Claim, the Defendant applied for permission to rely upon the witness statement of Ms Hadadi dated 17 April 2026 which provides clarification of how the 45-degree rule was considered by her when preparing the OR. The Claimant did not oppose the application to rely upon the witness statement and I granted that permission at the outset of the hearing.
31. Ms Hadadi’s witness statement clarifies the following points:

(1) she considered the 45-degree rule as a guide to be applied flexibly. She says: *“Upon review, I correctly identified and recorded in the OR the 45 degree rule approach as a guide”*;

(2) she did not determine in the OR whether the 45-degree rule was met. She had regard to the DAS but did not rely on its assertion that the 45-degree rule was met;

(3) she did not undertake a site visit as part of considering the application. She determined that the site information, site plans and elevations and Google satellite map imagery provided sufficient information to conduct a visual assessment using the rule as a guide, noting that the 45-degree rule was shown on the plans for No.85; and

(4) she does not now recall whether she believed the 45-degree rule was met in drafting the OR. She says: *“I do not recall now whether when drafting the OR, I “believed” that the 45 degree rule was met or not. Nor do I recall conducting any calculations or additional drawings to determine whether the proposal strictly complied with the 45 degree rule.”*

32. In support of the fourth point, in particular, Ms Hadadi said it would not be realistic to reconstruct each stage of her thought process going into the OR given the passage of time and the volume of planning applications she had assessed during that period. However, Mr Dale-Harris observed that his instructing solicitors wrote the pre-action protocol letter within a month of the Decision and it would not be unreasonable to assume that Ms Hadadi’s observations upon the challenge would have been sought at that earlier stage.

33. Ms Hadadi also explained that, upon her further review of the OR, she had noticed a minor discrepancy regarding the height of the proposed extension at the boundary with No. 89. The report states the height to be 2.4 meters, while the elevations under drawing 5617-11 label this as 2.5 meters from neighbouring ground level. She said this was a typing error and the additional 10cm difference would not have made a material difference to the overall conclusion reached in the OR.

34. Ms Hadadi’s statement concludes:

“13. If it is considered that I fell into error regarding the 45 degree rule, it is highly likely that this proposal would still have been granted planning permission. The overall acceptability of the proposal is demonstrated within the OR and its compliance with pertinent plans in Hackney’s Local Plan 2033 and London Plan 2021.

14. The breach shown on the plans submitted by the Claimant as part of their preaction correspondence is minor. This is to be expected considering the overall characteristics and dimensions of the proposed extension. A breach of the 45 degree rule does not mean that permission should not be granted. The SPD (paragraph 3.35) states that ‘These guidelines are general rules. The council will consider the design of each case separately when assessing the effects of an extension.’ The extension is in keeping with the local character of the area and reflects the pattern of similar extensions nearby. Its depth at ground floor level is comparable to No. 85 and is lesser on the upper ground floor level than the existing rear extension at

No.89, reinforcing my conclusion set out in the OR that the proposal would not have had an unacceptable detrimental impact on neighbouring amenity.”

The Legal Principles and Rival Arguments

Statute

35. I address section 31(2A) of the Senior Courts Act 1981 separately below.
36. Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that in dealing with an application for planning permission a Local Planning Authority such as the Defendant shall:

“..... have regard to -

 - (a) the provisions of the development plan, so far as material to the application,
 - (b) any local finance considerations, so far as material to the application, and
 - (c) any other material considerations.”
37. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that:

“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.”
38. I have already noted that Policy LP17 of the Hackney Local Plan provides that residential extensions and alterations schemes should have regard to the SPD; and that within that detailed design document the 45-degree rule is expressed in terms of being one that “*will be used as a guide in assessing the acceptability of applications for rear extensions*”.
39. Supplementary Planning Documents such as the SPD are subject to consultation but not examination (see the Town and Country Planning (Local Planning) (England) Regulations 2012, regulations 11 to 13) and they do not carry the weight of the statutory development plan. However, their terms are “material considerations” for the purposes of section 70(2)(c) of the TCPA 1990 in the determination of planning applications, as both parties recognised in relation to the SPD. This was also recognised by the IP through the statements made in the DAS about the 45-degree rule and, more generally, the depth of the proposed extension. It is clear from Ms Hadadi’s witness statement that she regarded the existence of the 45-degree rule within the SPD as a material consideration in the determination of the planning application. Adopting the language of paragraph 3.32 of the SPD, the OR itself said the 45-degree rule will be used as a guide in assessing the acceptability of applications for rear extensions.

Material considerations

40. The terms of Ms Hadadi’s witness statement means that the focus within the Claimant’s challenge is now upon the contention that, by proceeding in the absence of a

determination upon compliance with the 45-degree rule, the OR shows that the Decision failed to take account of a material consideration and is therefore erroneous in law.

41. Mr Dale-Harris recognised that, in order to reach that conclusion, the Claimant needs to establish that the Defendant was *required* to consider the 45-degree rule and its implications. It is clear from the decision in *R (ClientEarth) v Secretary of State for Business, Energy and Industrial Strategy* [2020] EWHC 1303 (Admin); [2020] P.T.S.R. 1709 that, for the purposes of this case, the underlying obligation from which such a requirement can be discerned must appear from a combination of the Local Plan (primarily Policy LP17 but also LP2) and/or the irrationality in not acting upon the Claimant's objection that the IP's proposal did not respect the 45-degree rule.

42. In *ClientEarth*, Holgate J, as he then was, said:

“99. In *R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] PTSR 221 the Supreme Court endorsed the legal tests in *Derbyshire Dales District Council* [2010] 1 P & CR 19 and *CREEDNZ Inc v Governor General* [1981] 1 NZLR 172, 182 which must be satisfied where it is alleged that a decision-maker has failed to take into account a material consideration. It is insufficient for a claimant simply to say that the decision-maker did not take into account a legally relevant consideration. A legally relevant consideration is only something that is not irrelevant or immaterial, and therefore something which the decision-maker is empowered or entitled to take into account. But a decision-maker does not fail to take a relevant consideration into account unless he was *under an obligation to do so*. Accordingly, for this type of allegation it is necessary for a claimant to show that the decision-maker was expressly or impliedly required by the legislation (or by a policy which had to be applied) to take the particular consideration into account, or whether on the facts of the case, the matter was so ‘obviously material’, that it was irrational not to have taken it into account.” (original emphasis)

In response to the main thrust of the Claimant's case based upon the OR's failure to take account of the 45-degree rule as a material consideration, Ms Finnegan relied upon the decision of Mr James Strachan QC, sitting as a Deputy Judge of the High Court, in *R. Gill v London Borough of Brent* [2021] EWHC 67 (Admin). In *Gill*, at [72]-[73], the judge considered the terms of the defendant's SPD, as a “material consideration”, in that case. He made the point, by reference to the decision of the Court of Appeal in *R. (Cherkley Campaign Ltd) v Mole Valley District Council* [2014] EWCA 567; [2014] PTSR D14, [16] and [21], that the SPD was not part of the adopted development plan itself to which the duty under section 38(6) of the PCPA 2004 Act applies. The decision in *Cherkley* made an equivalent distinction between the policy in a local plan and the supporting text which is not itself a policy or part of a policy. In *Gill*, the judge said the application of this guidance in the SPD therefore inevitably requires the exercise of a planning judgment with which this Court will not readily interfere.

43. Ms Finnegan said the guidance in the SPD cannot be treated as part of the adopted policy, nor can it impose additional development plan policy criteria. She relied upon the decision in *Mansell v Tonbridge and Malling Borough Defendant* [2017] EWCA Civ 1314, at [42], for the need to approach a challenge based on an officer's report with the question whether or not, on a fair reading of the report as a whole, the officer has materially misled the decision-maker on a matter bearing upon the decision and that

error has gone uncorrected before the decision was made. As Lindblom LJ said in *Mansell*, at [42(3)], “*unless there is some distinct and material defect in the officer’s advice, the court will not interfere.*”

44. Lindblom LJ was there addressing advice in the officer’s report to members of the planning committee, and a potential misdirection to misdirect members which renders their decision unlawful, but Ms Finnegan also relied upon the decision of Mr Neil Cameron KC, sitting as a deputy High Court judge in *Knight v Harrow* [2023] EWHC 678 (Admin) where he said:

“Officer Reports

14. The principles to be applied when a challenge is based on criticism of an officer’s report to a planning committee were set out by Lindblom LJ at paragraph 42 in *Mansell v. Tonbridge and Malling BC* [2017] EWCA Civ 1314. This case is not concerned with a report prepared for consideration by a planning committee. The OR in this case was prepared to inform a decision which was taken by a planning officer to whom the powers to determine the planning application were delegated. In my judgment the broad principles which apply to reports prepared to inform planning committees also apply to reports prepared to inform decisions taken by officers. Indeed, reports prepared to inform decisions taken by officers are often shorter than those prepared for committee, and it is reasonable to assume that there is little need for the attention of a senior planning officer to be drawn to each and every policy that may be applicable, or to the general policy background.”

Irrationality

45. The test for a finding of irrationality in claims for judicial review was summarised in the decision of the Divisional Court (Leggatt LJ and Carr J as they then were) in *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin); [2019] 1 WLR 1649 as follows:

“98. This legal basis for judicial review has two aspects. The first is concerned with whether the decision under review is capable of being justified or whether in the classic *Wednesbury* formulation it is “so unreasonable that no reasonable authority could ever have come to it”: see *Associated Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223, 233-4. Another, simpler formulation of the test which avoids tautology is whether the decision is outside the range of reasonable decisions open to the decision-maker: see e.g. *Boddington v British Transport Police* [1998] UKHL 13; [1999] 2 AC 143, 175 (Lord Steyn). The second aspect of irrationality/unreasonableness is concerned with the process by which the decision was reached. A decision may be challenged on the basis that there is a demonstrable flaw in the reasoning which led to it – for example, that significant reliance was placed on an irrelevant consideration, or that there was no evidence to support an important step in the reasoning, or that the reasoning involved a serious logical or methodological error.”

46. In *R. (KP) v SoS for Foreign, Commonwealth and Development Affairs* [2025] EWHC 370, Chamberlain J, as he then was, also drew a distinction between “process” and “outcome” irrationality:

“55. In most contexts, rationality is the standard by which the common law measures the conduct of a public decision-maker where there has been no infringement of a legal right, no misdirection of law and no procedural unfairness. It encompasses both the process of reasoning by which a decision is reached (sometimes referred to as “process rationality”) and the outcome (“outcome rationality”): see e.g. *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin), [2019] 1 WLR 1649, [98] (Leggatt LJ and Carr J)

56. Process rationality includes the requirement that the decision maker must have regard to all mandatorily relevant considerations and no irrelevant ones, but is not limited to that. In addition, the process of reasoning should contain no logical error or critical gap. This is the type of irrationality Sedley J was describing when he spoke of a decision that “does not add up – in which, in other words, there is an error of reasoning which robs the decision of logic”: *R v Parliamentary Commissioner for Administration ex p. Balchin* [1998] 1 PLR 1, [13]. In similar vein, Saini J said that the court should ask, “does the conclusion follow from the evidence or is there an unexplained evidential gap or leap in reasoning which fails to justify the conclusion?”: *R (Wells) v Parole Board* [2019] EWHC 2710 (Admin), at [33].

57. Outcome rationality, on the other hand, is concerned with whether – even where the process of reasoning leading to the challenged decision is not materially flawed – the outcome is “so unreasonable that no reasonable authority could ever have come to it” (*Associated Wednesbury Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, 233-4) or, in simpler and less question-begging terms, outside the “range of reasonable decisions open to a decision-maker” (*Boddington v British Transport Police* [1999] 2 AC 143, 175).”

47. In circumstances where the 45-degree rule forms part of *guidance* in the form of the SPD, striving to establish that the outcome of the Decision was not one reasonably open to the Defendant would appear to be step too far for the Claimant. Mr Dale-Harris’s emphasis was therefore upon “process irrationality”. He said the Decision did not add up when the evidence of Ms Hadadi was that she had regard to the 45-degree rule but did not proceed to consider or determine whether it was complied with.
48. Ms Finnegan relied upon the decision of the Court of Appeal in *Hughes v Kirklees* [2026] EWCA Civ 308, at [12] and [55], in saying that the test for “process irrationality” was that set out in the *Law Society* case and that “*some care is needed*” (per Zacaroli LJ at [55]) before concluding there is an unexplained evidential gap or leap in reasoning of a type which Chamberlain J in *KP v SoS* (using the alternative phrase “*no logical error or critical gap*”) identified as an additional element of that form of irrationality.
49. However, as Ms Finnegan recognised, such caution is needed where the decision under scrutiny is one taken on the recommendation of others set out in reports. The decision under challenge in *Hughes* was one taken by the defendant council’s cabinet and reached on the basis of reports from council officers. It was that situation which led

the Court to say, at [56]-[57], that, in such a case, the principles set out by Lindblom LJ in *Mansell*, at [42], were applicable to “*the interplay between the recommendation set out in officers’ reports and the decision taken in reliance on them*”.

Tameside

50. Within the challenge under Ground 1 the Claimant says, either further or alternatively, that the Defendant was in breach of its ‘Tameside duty’ to take reasonable steps to acquaint itself with the relevant information needed to make a decision: see *Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014. This is also a “rationality” question as it boils down to asking whether the decision-maker has sufficiently informed himself/herself/itself so to be able to reach a rational conclusion.
51. The duty is encapsulated in the passage of Lord Diplock’s speech in *Tameside* where he said, at p. 1065B: “*The question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?*”.
52. In *R. (Balijigari) v Secretary of State for the Home Department* [2019] EWCA Civ 673; [2019] WLR 4647, at [70], the Court of Appeal explained the Tameside duty as follows:

“The general principles on the Tameside duty were summarised by Haddon-Cave J in *R (Plantagenet Alliance Ltd) v Secretary of State for Justice* [2014] EWHC 1662 (Admin) at paras. 99-100. In that passage, having referred to the speech of Lord Diplock in *Tameside*, Haddon-Cave J summarised the relevant principles which are to be derived from authorities since *Tameside* itself as follows. First, the obligation on the decision-maker is only to take such steps to inform himself as are reasonable. Secondly, subject to a *Wednesbury challenge* (*Associated Provincial Picture Houses Ltd v Wednesbury Corp*n [1948] 1 KB 223), it is for the public body and not the court to decide upon the manner and intensity of inquiry to be undertaken: see *R (Khatun) v Newham London Borough Council* [2005] QB 37, para 35 (Laws LJ). Thirdly, the court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision. Fourthly, the court should establish what material was before the authority and should only strike down a decision not to make further inquiries if no reasonable authority possessed of that material could suppose that the inquiries they had made were sufficient. Fifthly, the principle that the decision-maker must call his own attention to considerations relevant to his decision, a duty which in practice may require him to consult outside bodies with a particular knowledge or involvement in the case, does not spring from a duty of procedural fairness to the applicant but rather from the Secretary of State’s duty so to inform himself as to arrive at a rational conclusion. Sixthly, the wider the discretion conferred on the Secretary of State, the more important it must be that he has all the relevant material to enable him properly to exercise it.”

53. That way of expressing matters points towards the duty being a blend of the concepts of “process irrationality” and “outcome irrationality” but the alleged breach of the Tameside duty is a free-standing ground of challenge and falls to be addressed as such.
54. *Balijigari* concerned the Home Secretary’s refusal to grant foreign nationals indefinite leave to remain in the country and the aspect of the case concerning the *Tameside* duty was whether he was under a duty to make enquiries of HMRC about how it had dealt with errors in their tax returns before making a determination about their dishonesty. Whether or not it was irrational for the Defendant not to carry out further investigations into the 45-degree rule obviously falls to be considered in light of the planning decision-making context of this case: see *R. (Jayes) v Flintshire CC* [2018] EWCA Civ 1089, at [14].

Adequacy of Reasons

55. As Ms Hadadi’s evidence could be said to be consistent with the Decision proceeding on the basis that the 45-degree rule was not complied with in relation to No. 89, the Claimant also said the OR demonstrated a failure to provide adequate reasons in support of it. The 45-degree rule creates a presumptive guide against the grant of planning permission, and no reasons were provided in the OR for departing from that presumption.
56. In *Dover DC v Campaign to Protect Rural England (Kent)* [2017] UKSC 79; [2018] 1 WLR 108, at [35]-[42], Lord Carnwath explained that the adequacy of reasons given by a local planning authority for granting permission is to be addressed by reference to the “broad summary” of the relevant authorities given by Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter (No 2)* [2004] 1 WLR 1953, at [36], as follows:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the ‘principal important controversial issues’, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

57. In *Dover*, at [36], Lord Carnwath went on to note Lord Brown’s endorsement of the “felicitous” observation of Sir Thomas Bingham MR in *Clarke Homes Ltd v Secretary*

of State for the Environment [2017] PTSR 1081, 1089, identifying the central issue in the case as being whether the decision “*leaves room for genuine as opposed to forensic doubt as to what he has decided and why*”. That issue falls to be resolved on “*a straightforward down-to-earth reading without excessive legalism or exegetical sophistication*”. Lord Carnwath said, at [42], that the “*essence of the duty*” to give adequate reasons involved avoiding genuine doubt in the mind of an affected party as to what has been decided and why.

58. Ms Finnegan also challenged the Claimant’s right to pursue a challenge to the Decision based upon inadequacy of reasons. She said “*Inadequate Reasons*” had been the Claimant’s Ground 5 and the Deputy Judge had not granted permission to pursue that ground. The allegedly inadequate reasoning that had been alleged by Ground 5 extended to the Claimant’s other three grounds (for each of which permission was also refused) based upon her complaints about heritage harm, the 3m ‘rule’ and a failure properly to apply Policy LP2 but it also overlapped with Ground 1 in saying the Claimant has no idea whether the Defendant held that the 45 degree rule was or was not complied with and why her objection on the point was seemingly ignored.

Section 31(2A) of the Senior Courts Act 1981

59. Ms Hadadi’s witness statement (see paragraph 31 above) highlights the duty imposed by section 31(2A) of the Senior Courts Act 1981 for the purpose of determining whether or not it is engaged.
60. In *R.(Bradbury) v Brecon Beacons National Park Authority* [2025] EWCA Civ 489; [2025] 4 WLR 58 the Court of Appeal provided guidance on the application of the test under s.31(2A). Lewis LJ said:

“70. Section 31(2A) of the 1981 Act provides that a court must refuse to grant a remedy on a claim for judicial review if it appears to the court that (1) it is highly likely (2) that the outcome for the claimant would not be substantially different (3) if the conduct complained of had not occurred. The outcome for the claimant is, usually, the decision or other measure that the public authority has taken. The “conduct complained of” is defined in section 31(8) as the conduct, or the alleged conduct, of the public body defendant which it is said justifies the grant of a remedy. In other words, the “conduct complained of” is the legal error or flaw which would justify the grant of a remedy in judicial review (unless a remedy was refused by reason of section 31(2A) or for some other discretionary reason).

71. In relation to section 31(2A), the court is concerned with evaluating the significance of the error on the decision-making process. It is considering the decision that the public body has reached, and assessing the impact of the error on that decision in order to ascertain if it is highly likely that the outcome (the decision) would not have been substantially different even if the decision-maker had not made that error. It is not for the court to try and predict what the public authority might have done if it had not made the error. If the court cannot tell how the decision-maker would have approached matters, or what decision it would have reached, if it had not made the error in question, the requirements of section 31(2A) are unlikely to be satisfied.”

61. Lewis LJ said, at [74], that the test is "*a high test to surmount.*"
62. In *R. (Hippolyte) v Secretary of State for the Home Department* [2025] EWCA Civ 1493, at [75]-[76], Singh LJ, having referred to *Bradbury*, warned against the danger of the court straying into the "*forbidden territory*" of itself seeking to assess the merits of the exercise of any discretion by the decision-maker.
63. Mr Dale-Harris relied upon the judgment of Sales LJ, as he then was, in *Public and Commercial Services Union v Cabinet Office* [2017] EWHC 1787 (Admin); [2018] 1 All ER 142 where, addressing witness evidence on a section 31(2A) point he said that "*self-interested speculations [about how things might have worked out if no unlawfulness had occurred] by an official of the public authority which has been found to have acted unlawfully should be approached with a degree of scepticism by a court.*"

Decision

64. In my judgment, the Decision was based upon clear errors of law and is unlawful.
65. I deal first with a number of matters which are relevant to that finding before explaining my reasons in support of it.
66. Firstly, I have concluded that it is open to the Claimant to advance an "inadequate reasons" argument as part of her Ground 1. The Statement of Facts and Grounds (at paragraph 41) made the argument that the 45-degree rule creates a presumptive guide against the grant of permission where it is not complied with, and the OR had provided no reasons explaining why there should be a departure from the presumption. This was said to be "*a clear failure to provide adequate reasons*", albeit on the third of the alternative premises (see paragraph 29 above) that the OR preceded on the basis that the 45-degree rule was not complied with. That was part of the argument on Ground 1 for which the Deputy Judge gave permission.
67. I have already remarked that Ms Hadadi's subsequent witness statement could be read as indicating that the Decision was made on the basis that the 45-degree rule was not complied with in relation to both neighbouring properties. When the Deputy Judge gave permission on Ground 1 on the basis that "*it was arguably necessary for the Defendant to reach a conclusion on whether the 45 degree rule was met in this case*" it seems to me to be obviously implicit that, if it was necessary to reach such a conclusion, then the OR should adequately explain the reasoning behind it.
68. Secondly, I have also decided that it would be wrong for me to place no reliance upon the post-Decision drawing relied upon by the Claimant to show a 1.1m infringement of the 45-degree rule in relation to No. 89 (see paragraph 21 above) as Ms Finnegan, in effect, suggests. The DAS did not expressly address No. 89 on the issue of compliance with the 45-degree rule. The Claimant had clearly put the 45-degree rule in the arena, from the decision-maker's perspective, by the terms of her objection to the planning application. Had she not done so then that might have spoken volumes about the merits of any subsequent challenge based upon the Defendant having failed to consider its implications as a material consideration for the purposes of section 70(2)(c) of the TCPA 1990.

69. However, as she did do so, it would be wrong to ignore the later drawing which she relies upon to vindicate her earlier (and continuing) position. Of course, she must first establish that the existence of the 45-degree rule supports such a challenge but, if it does, the subsequent drawing then forms part of her case. She would not succeed on that case if I was satisfied on the facts that it is highly likely that the outcome would not have been substantially different if the error based upon a failure to consider the rule had not occurred: see section 31(2A) of the Senior Courts Act 1981 requiring the court to refuse to grant any relief in that situation. In my judgment it would be perverse to ignore the drawing as a piece of “evidence” undermining any such conclusion when, although not formally verified by a witness statement, its accuracy has not been disputed since it was provided in late September 2025. If that is right, then it must I think follow that the drawing should properly be treated as also supporting the first part of her case in establishing the error.
70. The last of my preliminary matters to be addressed before stating my reasons concerns the approach to be taken towards the OR. With the observations of Vos C. in *Mansell*, at [63], well in mind (he was addressing planning officers’ reports written for councillors on the planning committee), Ms Finnegan correctly pointed out that the OR was not written for lawyers. However, I do not accept her analysis that the OR should be treated as written by one planning officer (Ms Hadadi) for another decision-maker (Mr Dargue) who can be taken to be well-versed in planning policy and local factors, and who the court should assume approached the report using that local knowledge and much common sense. Although their signatures bear different dates, and Mr Dargue’s bears the date of the Decision, the OR is signed by both of them and the reasons in it are *their* reasons.
71. This is not, therefore, the type of case addressed in *Hughes v Kirklees* where the court needs to be cautious before reaching a conclusion that there has been some logical error or a leap over a key evidential gap on the part of a decision-maker who is not the author of the OR. Whether or not the Decision was an irrational one because the process by which it was reached involved overlooking an obviously material consideration in the impact of the 45-degree rule upon No. 89 is to be determined by reference to OR without any further assumptions that Mr Dargue might have weighed it up as a factor “off the page”.

Reasoning in support of my Decision

72. It is of course for the decision-maker to assess the relative weight to be given to all material considerations. I accept Ms Finnegan’s point that, not being part of the Local Plan, the 45-degree rule in the SPD falls short of creating a presumption against permission where it is not met. The SPD is guidance and the language of Policy LP17 directing the decision-maker’s attention to the SPD is “*should have regard to*”, not “*must be decided in accordance with*” or even “*save in exceptional circumstances, will be decided in accordance with*” (or similar words of presumption).
73. Nevertheless, putting to one side for the moment any separate point about the adequacy of the explanation of the resulting decision, which of course will reflect all the other factors feeding into the process of determination required by section 70(2) of the TCPA 1990, an assessment of the weight to be given to material factor such as the 45-degree

rule does require some consideration of its potential impact upon the decision. Section 70(2)(c) requires the planning authority to *have regard to* material considerations (the same language used in LP 17 in relation to the SPD) and that clearly involves something more than simply paying lip-service to them. Merely noting the existence of a “material consideration” without *considering* how much weight, if any, is to be given to it would not be a proper exercise in having regard to it or in treating it as potentially material. Nor, in my judgment, could such a token nod to a material consideration, without some assessment of how it bears upon the decision, be sensibly said to be part of the proper exercise of a planning judgment by the planning authority.

74. I have set out the relevant parts of the OR in paragraph 26 above.
75. In the section headed ‘Residential Amenity’, the OR quoted verbatim from paragraph 3.32 of the SPD, in relation to the use of the 45-degree rule to protect against loss of amenity, and it went on to say that it considered that the proposed development is acceptable in amenity terms. This was on the basis it would not result in an unacceptable detrimental impact upon neighbours in terms of provision of daylight or outlook or any unacceptable overbearing or sense of enclosure.
76. The ‘Conclusion’ in the OR about the “*scale and position of the development*” was expressed by reference to the “*character and appearance of the subject building and the surrounding area*”. It was by reference to those matters (see the language of “*As such*”) that it was said to comply with pertinent policies in the Local Plan. The focus in the overall conclusion therefore appears to have been upon the requirement in Policy LP2 that the development should be appropriate to its location rather than there being no significant adverse effects upon amenity.
77. In my judgment, what the OR shows is that the 45-degree rule was recognised to be a material consideration but that there was no assessment by the planning officers of its potential impact upon their decision. Ms Hadadi’s witness statement also confirms that she was aware the 45-degree rule existed as a guide which, being a guide rather than a ‘rule’ necessarily determinative of the application, was to be applied flexibly. However, there is no indication that it was applied, at all, or, to put it another way, that its potential significance in relation to the impact upon the amenity of No. 89 was factored into the Decision. I think it is fair to summarise Ms Hadadi’s evidence as saying that, in relation to No. 89, the 45-degree rule was not taken into account. For it to have been taken into account, the OR would have needed to establish the centre-point of the nearest ground floor window of a habitable room in No. 89. That was not done.
78. In my judgment, the Defendant therefore failed to take into account a material consideration in the 45-degree rule. It was irrational not to do so when the Claimant had raised an objection based upon the 45-degree rule. Ms Finnegan described the 45-degree rule as just “one tool in the box” for the purposes of forming the view upon residential amenity in the OR. However, as I said at the hearing, the tool has to be taken out of the box for the purposes of testing its usefulness. That is particularly so when the supporting text in Policy LP2 identifies the protection of amenity as being a “*key consideration*” and a “*major consideration*”. That supporting text needs to be read with the qualification in *Cherkley*, at [16], in mind (i.e. it is not policy and does not trump policy even when the text indicates how the policy will be implemented) but, even when “read down” that way, it reinforces the materiality of the 45-degree rule.

79. The present case is to be contrasted with the facts in *Gill*. In *Gill*, the terms of the planning guidance in the SPD relied upon were much less precise than that based upon the 45-degree rule (“*good levels of private outdoor space and well-designed communal space for new residents*”) and fully supported the judge’s observation that the guidance inevitably required the exercise of a planning judgment. Neither the claimant or any other objector had relied upon that guidance before the (post-decision) pre-action protocol letter and, crucially, the court said, at [71]: “*The SPD is identified as a material consideration in the OR. It is therefore reasonable to assume that it was taken into account.*” The evidence in this case does not support the same assumption so as to support a conclusion that the 45-degree rule *was* weighed up in the officers’ exercise of a planning judgment.
80. The same oversight, which is revealed by the OR introducing the 45-degree rule as a material factor but not then applying it for the purpose of weighing up its impact, also means that the challenges based upon “process irrationality”, the closely-related breach of the Tameside duty and also the inadequacy of reasons are in my judgment each also made out.
81. I accept Mr Dale-Harris’s submission that the Decision does not add up when the OR referred to the 45-degree rule but gave no indication that it had been applied or, if applied, with what effect on the exercise of the planning judgment. The conclusion in the ‘Residential Amenity’ section of the OR that there was not an unacceptable detrimental impact upon neighbouring occupiers appears to have been reached *regardless* of the 45-degree rule; and Ms Hadadi’s witness statement reinforces that impression.
82. Ms Hadadi says she correctly identified and recorded in the OR the 45-degree rule approach as a guide. However, the Claimant’s complaints are that there is a critical gap between the reference to the 45-degree rule and that conclusion (with a resulting leap in reasoning to be inferred) and a concomitant failure by the decision-makers to take reasonable steps to inform themselves of the impact of the rule. Those complaints cannot be met by saying that reference was made to the 45-degree rule in the OR, so that some weight was given to it. The rule itself carries no weight, in some ontological sense, without it being applied. As Mr Dale-Harris submitted, it makes no sense to use the 45-degree rule as a guide without forming a view on whether or not it has been complied with. Although the rule was engaged, and was noted by the OR to be engaged, Ms Hadadi’s witness statement confirms that no such view was formed.
83. In my judgment, it must also follow that the reasoning in the ‘Residential Amenity’ section of the OR is not sufficiently intelligible or adequate for the purpose of enabling the reader to understand why issue of the 45-degree rule raised by the Claimant was decided as it was. The way the impact upon the neighbours’ amenity was addressed in the OR leaves room for genuine as opposed to nitpicking doubt as to what has been decided and why.
84. I therefore find that the Decision was unlawful.
85. I am also satisfied the Decision should be quashed. Despite the terms of Ms Hadadi’s witness statement on this aspect, I have not been persuaded that the high test imported by the provisions of section 31(2A) of the SCA 1981 has been met. I have already indicated to conclude that the threshold in section 31(2A) is met would require me to

ignore the Claimant's drawing - see paragraphs 69-70 above - when I think that would be a questionable decision (to put it at its lowest for the purposes of that high test). Ms Hadadi says in her witness statement that the infringement of the 45-degree rule shown by the Claimant's drawing is "*minor*". However, it would not be right for me to enter the "*forbidden territory*" (per *Hippolyte*) of accepting that view and acting upon it for the purpose of exercising my own "planning judgment" on an application for permission which represented there had been no infringement at all.

Disposal

86. For those reasons I find the Decision was unlawful and I will make an order quashing it.
87. This judgment will be handed down remotely and I invite the parties to agree a form of order reflecting my decision and disposing of all matters on the claim. If any consequential matters cannot be agreed then I will determine them on the papers, alongside any application by the Defendant for permission to appeal. The handing-down will be adjourned for the purposes of preserving the time limit for serving and filing an appellant's notice and I will specify the time for filing one in accordance with CPR 52.12 in my order disposing of any application for permission to appeal. If an application for permission to appeal is to be made the draft grounds of appeal should be served and filed with the court within 7 days of the handing down of this judgment.