Neutral Citation Number: [2026] CIGC (Civ) 21

Cause No: G2025-0254

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

BETWEEN:

THE KING
(On the application of
(1) THE PROPRIETORS OF STRATA PLAN 148; and
(2) THE PROPRIETORS OF STRATA PLAN 3)

Applicants

-and-
CHAIRMAN OF THE PLANNING APPEALS TRIBUNAL

Respondent

(1) BUTLER GROUP LIMITED
(2) CENTRAL PLANNING AUTHORITY

Interested Parties

Appearances:	**Mr Chris Buttler KC instructed by Ms Kate McClymont of Nelsons Legal for the Applicants**
	Senior Crown Counsel Mr Nigel Gayle and Crown Counsel Ms Felicia Connor of the Attorney General's Chambers for the Respondent
	Mr Samuel Jackson and Ms Selina Tibbetts of Jackson Law for the First Interested Party
	Crown Counsel Ms Anna Russell-Knee of the Attorney General's Chambers for the Second Interested Party
Before:	**The Honourable Justice Jalil Asif**
Heard:	**19 and 20 March 2026**
Judgment:	**3 June 2026**

Judicial review—planning appeal—failure to serve notice of appeal when it was filed—construction of Rule 17 of Development and Planning (Appeals) Rules—whether Development and Planning (Appeals) Rules specify any consequence for failure to serve notice of appeal—whether appellant required extension of time to serve notice of appeal—matters to be considered by tribunal when determining whether to grant an extension of time—whether tribunal gave adequate reasons for refusal to grant extension of time

Practice and procedure—circulation of embargoed draft judgment to attorneys for correction of errors—proper approach of attorneys to that task

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JUDGMENT

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A. The issues on this judicial review

1. This application for judicial review concerns two decisions made by the Chairman of the Planning Appeals Tribunal, as set out in a written *"Decision"* dated 8 July 2025. The decisions in question concerned an intended appeal by two neighbouring strata and a number of strata unit owners against the grant of planning permission by the Central Planning Authority in a decision letter dated 19 November 2024 for the redevelopment of the Aqua Bay Beach Club Condominiums at 2093 West Bay Road, Grand Cayman.

2. As I explain later in this judgment, the Chairman of the Planning Appeals Tribunal: (1) concluded that the failure to serve their notice of appeal upon Butler Group Ltd, the developer and agent of the applicant for planning permission, resulted in the appeal being void unless the appellants obtained an extension of time; and (2) decided that he would not grant the appellants the necessary extension to permit their appeal to proceed. The applicants for judicial review challenge both of those decisions. They say that the Chairman's first decision was wrong in law; and that he failed to give adequate reasons for his second decision and that there is a real possibility that, properly directing himself, the Chairman might have reached a different conclusion on granting an extension of time.

3. Having heard oral argument on 19 and 20 March 2026, I concluded that I should quash the Chairman's decision to refuse the extension of time because the Chairman had failed to give adequate reasons for that decision and there was a real prospect that he might make a different decision. However, I reserved my judgment on whether the Chairman had erred in law in determining that the appeal was void unless the appellants obtained an extension of time. I now

return to this matter to give my reasons why the Chairman's reasons for refusing the extension of time were inadequate and to give my decision on whether the appellants required an extension of time at all.

B. Introductory matters

4. In this judgment I use the following abbreviations:

the Act	the Development and Planning Act (2021 Revision)
the Appellants	the appellants against the decision of the Central Planning Authority dated 19 November 2024 to grant planning permission
the Chairman	the Chairman of the Planning Appeal Tribunal, the Respondent
the CPA	the Central Planning Authority, the Second Interested Party
the Developer	the Butler Group Ltd, the First Interested Party
the PAT	the Planning Appeals Tribunal
the Regulations	the Development and Planning Regulations (2024 Revision)
the Rules	the Development and Planning (Appeals) Rules (1999 Revision)
the Strata	the two strata that have applied for judicial review

5. The applicants for judicial review, the Strata, are represented by Mr Chris Buttler KC instructed by Ms Kate McClymont of Nelsons Legal. They are a small sub-set of the original appellants against the CPA's grant of planning permission, who comprised some 51 individual strata unit owners as well as the Strata.

6. The Chairman is represented by Senior Crown Counsel Mr Nigel Gayle and Crown Counsel Ms Felicia Connor of the Attorney General's Chambers. Mr Samuel Jackson and Ms Selina Tibbetts of Jackson Law appear for the Developer. Crown Counsel Ms Anna Russell-Knee of the Attorney General's Chambers represents the CPA. I am grateful to all of the attorneys for their efforts to narrow the issues at the final hearing from their wider ambit at earlier stages of these proceedings.

7. The materials before the Court comprise:

7.1 the written Decision of the Chairman dated 8 July 2025;

7.2 the originating application dated 9 October 2025;

7.3 affidavits from the following persons:

(a) Helen Haddleton, one of the Appellants, sworn on 30 September 2025 to verify the content of the *ex parte* application for leave to pursue judicial review;

(b) Selina Tibbetts of Jackson Law, sworn on 10 October 2025 to support the Developer's application to set aside the grant of leave, which I heard and refused on 11 and 12 December 2025: see my judgment [2026] CIGC (Civ) 11;

(c) two affidavits of Brian Butler of Butler Group Ltd, the first sworn on an unspecified date on or before 13 October 2025 and the second sworn on 19 November 2025, and both sworn to support the Developer's application to set aside the grant of leave;

(d) two affidavits of Jennifer Rudd of Nelsons Legal, which were sworn solely to put certain *inter partes* correspondence in evidence;

(e) a third affidavit of Jennifer Rudd sworn on 12 December 2025 to support an application to substitute the Chairman as Respondent in place of the PAT, a substitution that was agreed by consent before the substantive hearing;

(f) a fourth affidavit of Jennifer Rudd sworn on 12 March 2026 to put in evidence a number of documents concerning the pursuit of the Appellants' intended appeal to the PAT – Mr Gayle objected to certain of the documents exhibited by Ms Rudd being adduced in evidence;

7.4 an agreed selection of relevant documents and communications concerning the Appellants' intended appeal to the PAT extracted from the exhibits to Ms Rudd's fourth affidavit;

7.5 *inter partes* correspondence;

7.6 summonses and orders in the proceedings; and

7.7 the various parties' skeleton arguments.

C. The facts

8. As the focus for this application is upon the Decision, I can set out the underlying facts in relatively short form. As a result, I have omitted a number of points of detail that I consider to be relevant only to: (a) the now resolved procedural dispute between the parties as to whether the substantive complaints should proceed as an appeal under GCR O.55 or by way of a judicial review; (b) whether the proper respondent to the judicial review is the PAT or the Chairman; (c) certain grounds of challenge or kinds of relief that were abandoned by the Applicants before or during the course of the hearing; and (d) issues of costs.

9. On 4 June 2024, the Developer applied for planning permission for the redevelopment of the Aqua Bay Beach Club site. As part of the usual preparation for the CPA to consider the application, the CPA obtained the views of the Department of the Environment and of the National Conservation Council regarding the application. The objectors to the grant of planning permission included the Appellants.

10. The CPA considered the Developer's application at its meeting on 9 October 2024. It resolved to approve the application and recorded the same in a formal decision letter dated 19 November 2024. The decision letter included a number of conditions to the grant of planning permission.

11. By letter dated 19 November 2024, the CPA wrote to Nelsons on behalf of the Appellants to inform them of the outcome of the planning application and to provide a copy of the decision letter. In its letter dated 19 November 2024, the CPA reminded the Appellants of their right of appeal against the grant of planning permission and of the formal requirements with which the Appellants would need to comply if they did pursue an appeal.

12. However, Mr Gayle for the Chairman accepts that the CPA's letter was in fact sent on 26 November 2024 (see paragraph 12 of his Skeleton Argument). The CPA's 7-day delay in sending its letter to Nelsons is unfortunate. Such a delay risks causing confusion if an accurate chronology subsequently becomes relevant, as it has done in this case. Moreover, the delay is particularly unfortunate here because this was a significant letter that started the period for filing a Notice of Appeal. One of the consequences is that the Appellants' time for filing their Notice of Appeal expired no earlier than 10

December 2024, rather than on 4 December 2024 as the Appellants and the PAT appear to have considered. For the future, the CPA should make sure that the date on any correspondence matches the date when the correspondence is actually sent, including updating the stated date if the correspondence is delayed in being despatched for any reason.

13. Nelsons prepared a Notice of Appeal dated 2 December 2024, which recorded that the Appellants were appealing against the grant of planning permission and gave notice that a Memorandum of Grounds of Appeal and draft form of order would be filed in due course pursuant to Rule 5 of the Rules.

14. Nelsons filed the Notice of Appeal by email at 10:24 am on 4 December 2024. Nelsons copied in the Director of Planning by way of service. However, as the result of admitted human error, Nelsons omitted to copy the email to the Developer or its attorneys, so that the Notice of Appeal was not served on the Developer at that time. However, the evidence is that Mr Butler emailed the CPA independently at 9:39 am on 4 December 2024 to check that he was correct that time for an appeal had expired the previous day (he was not correct) and that the CPA had not received a Notice of Appeal. One of the CPA's members of staff responded at 10:48 am on 4 December 2024, just over 1 hour after Mr Butler's email and less than 30 minutes after Nelsons' email filing and serving the Notice of Appeal, to inform Mr Butler that the CPA had received a Notice of Appeal in time.

15. On 30 December 2024, the Director of Planning delivered the appeal brief to Nelsons. Under the Rules, this should have been served by 18 December 2024.

16. On 13 January 2025, Nelsons served the Appellants' Memorandum of Grounds of Appeal and draft Order. Nelsons included Mr Jackson, the Developer's attorney, as a recipient to their email and indicated that the email was intended to be effective service of the Grounds of Appeal.

17. Mr Jackson responded later during the afternoon of 13 January 2025, stating that Nelsons' email was the first communication about the appeal that the Developer's side had received and complaining that the Appellants had failed to comply with Rule 3 of the Rules by failing to serve their

Notice of Appeal on the Developer. Mr Jackson appears to have been unaware of the exchange of emails between Mr Butler and the CPA on 4 December 2024.

18. On 15 January 2025, the Appellants served their Notice of Appeal on the Developer in order to correct the position regarding service.

19. On 10 February 2025, the Chairman of the PAT contacted the parties indicating that Mr Jackson's email of 13 January 2025 had been forwarded to him and stating that any application for an extension of time under Rule 17 of the Rules should be made to the Chairman.

20. Nelsons responded on 11 February 2025. Ms McClymont stated that the Appellants did not consider that they needed an extension of time because they had filed all of the relevant documents within the timeframes required by the Rules and that the Developer's complaint was about the timing of service of the Notice of Appeal. She said that, nevertheless, out of caution, the Appellants were applying for an extension of time under Rule 17 and she attached an application. In addition, she attached the Appellants' draft submissions in support of the substantive appeal to assist in demonstrating that the appeal was at least arguable, which she indicated was a relevant criterion for the grant of any extension of time. Ms McClymont invited the Chairman to find that no extension of time for service of the Notice of Appeal was required but, if one were necessary, to grant it.

21. On 14 February 2025, the PAT Secretariat notified the parties that the Chairman would deal with the application on 21 February 2025. There was then some debate as to whether the application should be determined by the PAT, as contended for by the Developer, or by the Chairman, as contended for by the Appellants, and whether the Chairman would deal with the matter on the papers, as contended for by the Appellants, or whether there should be an oral hearing, as contended for by the Developer. The upshot of this was that it was determined that the parties should have the opportunity to present written and oral arguments and that the application would be dealt with by the Chairman. The hearing was initially fixed for 30 May 2025 but was subsequently put back to 27 June 2025.

22. The Appellants filed written submissions dated 20 May 2025 and also relied on their draft skeleton argument on the substantive appeal dated 11 February 2025. The Appellants' written submissions reiterated that there was no dispute that their Notice of Appeal had been filed in time, and that the only dispute concerned the Appellant's failure to serve a copy on the Developer. The Appellants continued to argue that they did not require an extension of time and that there was no requirement for service on the Developer within a particular time, but that if the Chairman disagreed, then the Chairman should grant the necessary extension to 15 January 2025.

23. The Appellants noted that the Developer was informed by the CPA on 4 December 2024 that a Notice of Appeal had been filed, the same day that it was filed; that the Developer could have requested a copy of the Notice of Appeal but did not; and that if the Developer had been served with or had requested a copy of the Notice of Appeal, it would not have provided the Developer with any additional information that it did not already have. Accordingly, there was no prejudice to the Developer resulting from the failure to serve the Notice of Appeal. The Appellants submitted that neither the Act nor the Rules provide any specific time limit within which a Notice of Appeal must be served, and neither do they specify any consequence of a breach. The Appellants referred to the principle in public law cases that substance rather than form is what matters and submitted that there was therefore no need for them to obtain an extension of time at all.

24. As to any grant of an extension of time, based on *Esso Standard Oil v CPA* (unreported, 14/01/05) and *Frank Hall Homes v PAT* [2001] CILR Note 5, the Appellants submitted that the Chairman should consider the length of the delay, the reasons for it, the apparent merits of the intended appeal, and the prejudice to other parties if time were to be extended. The Appellants then set out their detailed arguments on those points. In particular, as to the merits of the intended appeal, the points raised by the draft skeleton argument included:

    24.1 the CPA had misconstrued and/or misapplied Regulation 8(4) of the Regulations as regards what qualifies as *"non-habitable ancillary space"* with the result that the CPA had allowed development above the 10-storey limit intended by Parliament;

24.2 the CPA had failed to consider the loss of amenity to neighbouring properties resulting from overshadowing by the proposed development, and had refused to consider the content of the draft Final National Planning Framework, which was relevant to this issue; and

24.3 contrary to section 41(4) of the National Conservation Act, the CPA had failed to impose conditions in the terms required by the National Conservation Council and instead had revised and added its own gloss to those conditions.

25. The Developer's submissions were dated 27 May 2025 and annexed its draft skeleton argument in opposition to the intended appeal. The Developer complained that the Appellants had failed to comply with the requirement in Rule 3 that the Notice of Appeal should be served "*immediately*" after filing. The Developer made submissions as to the length of the delay, the absence of any reasons for it, the lack of apparent merit of the intended appeal, and the prejudice to the Developer if an extension were to be granted. Further, the Developer submitted that the Appellants' proposed grounds of appeal did not have realistic prospects of success.

26. In addition, the CPA also filed submissions dated 27 May 2025, which made similar points to those advanced by the Developer and added that the Appellants had not adduced any evidence to explain why they had not complied with the service requirements in Rule 3.

27. Both the Appellants' and the Developer's attorneys prepared speaking notes for the hearing, which are included in the evidence before me. The Decision records that Ms McClymont relied upon the content of her speaking note due to issues with her voice on the day of the hearing.

28. The Appellants' speaking note expressly relied upon the principle derived from *R v Soneji* [2006] 1 AC 340, where the English House of Lords indicated that, in order to determine the consequence of a failure to comply with a statutory requirement, the tribunal should consider whether Parliament can fairly be taken to have intended that the failure to comply should result in total invalidity of the proceedings. On that basis, Ms McClymont argued over 22 paragraphs of her speaking note that the essential machinery of an appeal was the requirement to file the Notice of Appeal, and the

requirement for service of the Notice of Appeal was merely supportive, so that a failure to serve the Notice of Appeal upon the Developer should not invalidate the appeal.

29. As to the question of an extension of time, Ms McClymont identified the relevant criteria as follows:

29.1 the prejudice to the respondent;

29.2 the length of the delay;

29.3 the importance of the issue; and

29.4 the merits of the intended appeal.

By reference to Cayman Islands authorities, Ms McClymont submitted that it was sufficient for the Appellants to establish one of the grounds and it was not necessary for them to satisfy more or all of them. She put forward detailed arguments on each of the four topics that she identified.

30. I note in passing that Ms McClymont omitted from her list of relevant considerations the question of the reasons for the delay. I infer this was tactical rather than an oversight on her part.

31. Ms McClymont started by arguing that the Developer had not suffered any prejudice as a result of the failure to serve the Notice of Appeal, since it was aware at all relevant times that a Notice of Appeal had been filed. Ms McClymont submitted that there was no causal link between the prejudice alleged by the Developer and the failure to serve the Notice of Appeal in December 2024.

32. Secondly, Ms McClymont argued that the relevant delay was 40 days, rather than 75 days as contended for by the Developer. I record here that it was agreed between the parties that I should assume for the purpose of this judicial review that the delay was 42 days, albeit there are various arguments available to the Appellants that it should be treated as being substantially shorter. Ms McClymont did not put forward any reason for the delay, although I understand that, during the course of the hearing before the Chairman, she said that it was due to human error.

33. Ms McClymont's third criterion was a new point, which she derived from *Streeter v Immigration Board* [1999] CILR 270, where Smellie CJ (as he was then) indicated that it may be relevant that the

case raises an important issue where the law requires clarifying. Ms McClymont set out a number of issues raised by the appeal, which she contended were important, hard-edged questions of law that had wider significance in the Cayman Islands generally, and which had good prospects of success. These included:

33.1 the proper interpretation of Regulation 8(4) regarding *"non-habitable ancillary space"* and its impact on building height within the Cayman Islands generally;

33.2 the impact on the amenity of neighbouring properties, having regard to the Development Plan / draft Final National Planning Framework for the Cayman Islands; and

33.3 the CPA's approach of treating two non-contiguous parcels of land as if they were one for the purpose of considering the density of the proposed development overall.

In addition, Ms McClymont complained in her draft skeleton argument in support of the intended appeal that the CPA had not complied with section 41(5) of the National Conservation Act, which required the CPA to impose on the planning permission those conditions required by the National Conservation Council. Instead, the CPA had modified the National Conservation Council's required conditions in certain material respects, which she said had the result that the CPA had acted unlawfully.

34. Ms McClymont concluded her speaking note as follows:

> *"48. Drawing the threads together:*
>
> *(1) Serving an appeal notice does not go to the validity of an appeal because it is not part of the essential procedural machinery of the legislation, in circumstances where effective service is ultimately secured by the Permanent Secretary. Accordingly, an extension of time is not required to enable the appeal to proceed.*
>
> *(2) Alternatively, if an extension of time is required, then this is the plainest possible case for an extension because the developer has known about the appeal since the day the Appeal Notice was filed. That would plainly bee [sic] enough to justify an extension of time, but – in addition – the appeal raises an important point of statutory interpretation which is not only arguable, but has very strong prospects of success."*

35. The Developer's speaking note argued that ***R v Soneji*** and the principle to be derived from it were irrelevant because the consequence of a failure to comply with the Rules is the need to obtain an extension of time under Rule 17: in other words, Parliament's intention is that an applicant should demonstrate *"good cause"* for an extension of time and cannot otherwise pursue their appeal. The

Developer then addressed the four criteria derived from *Esso Standard Oil v CPA* (unreported, 14/01/05) and *Frank Hall Homes v PAT* [2001] CILR Note 5, that I have already described, and set out the Developer's position on those factors.

D. The Decision

36. The Chairman's written decision is dated 8 July 2025. It records that the hearing took place on 27 June 2025. The Decision document runs to 58 pages, structured as follows:

36.1 pages 1-2 – title and statement of decision;

36.2 pages 2-5 – a summary of the underlying facts, the content of the relevant Rules and references to case law;

36.3 page 5 – a comment that the Appellants had not put forward any explanation of why they had not served the Notice of Appeal on the Developer;

36.4 pages 6-22 – a summary of the Appellants' case, very largely copied from Ms McClymont's speaking note;

36.5 pages 22-24 – the CPA's submissions copied verbatim from paragraphs 18-23 of the CPA's written submissions;

36.6 pages 24-55 – a summary of the Developer's case set out in its speaking note, described in the Decision as being *"reproduced essentially verbatim"*;

36.7 pages 56-57 – the Chairman's conclusions;

36.8 page 57 – the Chairman's ruling; and

36.9 page 58 – the Chairman's decision on costs and signature.

E. Adequacy of reasons

E.1 The law

37. The Strata rely on a number of English cases concerning the requirement for adequate reasons, with a particular focus on planning matters. First, in *Save Britain's Heritage v Number 1 Poultry Ltd* [1991] 1 WLR 153, Lord Bridge described the requirement for reasons at 170 as:

> *"[…] a salutary safeguard to enable interested persons to know that the decision has been taken on relevant and rational grounds and that any applicable statutory criteria have been observed. It is the analogue in administrative law of the common law's requirement that justice should not only be done, but also be seen to be done […]"*

38. As to the content of the reasoning expressed, in *South Bucks District Council v Porter (No 2)* [2004] UKHL 33, Lord Brown said at paragraph 36:

> *"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."*

39. The English Court of Appeal explained in *Flannery v Halifax Estate Agencies* [2000] 1 WLR 377 at 381 that:

> *"The duty is a function of due process, and therefore of justice. Its rationale has two principal aspects. The first is that fairness surely requires that the parties especially the losing party should be left in no doubt why they have won or lost. This is especially so since without reasons the losing party will not know (as was said in* Ex parte Dave*) whether the court has misdirected itself, and thus whether he may have an available appeal on the substance of the case. The second is that a requirement to give reasons concentrates the mind; if it is fulfilled, the resulting decision is much more likely to be soundly based on the evidence than if it is not."*

40. Mr Gayle accepts in principle that giving reasons is an important aspect of lawful administrative decision-making, which promotes transparency and fairness, enables the parties to understand the basis upon which a decision has been made, and allows the court to determine whether the decision-maker has acted lawfully and within the scope of the powers conferred upon him or her. However, he submits that neither the legislative framework for planning matters, Rule 17 of the Rules nor the common law imposed any duty on the Chairman to give reasons for his decision. Mr Gayle argues that this positive duty arises under clause 19(2) of the Constitution of the Cayman Islands and only if a request for reasons is made, which he says was not done in this case.

Nevertheless, the Decision nevertheless included reasons, which Mr Gayle argues were adequate, albeit he contends that adequacy of reasons is neither a stand-alone ground, nor as a matter of law, an established ground for judicial review.

41. As to the content of any reasons that are given, Mr Gayle cites the same passage from paragraph 36 of Lord Brown's speech in *South Bucks District Council v Porter (No 2)* relied on by Mr Buttler, but with the addition of the following continuation of Lord Brown's speech in that paragraph:

> *"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."*

Mr Gayle relies particularly on the last sentence of this passage to argue that the party aggrieved must be able to show that he has genuinely been substantially prejudiced by the failure to give reasons.

42. I agree with Mr Gayle that Rule 17 does not expressly state a requirement to give reasons, but I disagree that the Chairman is not subject to a common law obligation to give adequate reasons for his decision. I disagree with Mr Gayle that clause 19(2) of the Constitution provides the sole basis for the Chairman's obligation to give reasons in respect of the exercise of the statutory powers of the PAT or of its chairman. Briefly, as Mr Gayle recognises in his submissions, the PAT and its Chairman are exercising a quasi-judicial function in determining contested appeals from the CPA and any associated procedural issues that arise during the course of an appeal. Accordingly, in my judgment, the exercise of that function in an adversarial context carries with it the common law duty to give adequate reasons, as set out in the English cases relied upon by Mr Buttler, which I consider apply with equal force in the Cayman Islands. The duty under clause 19(2) of the Constitution to give reasons applies to any kind of administrative decision making, whether in an adversarial context or

not, and thus it is substantially broader in potential application than the common law duty. In my view, the requirement in clause 19(2) of the Constitution that the affected person is required to request reasons acts as a control mechanism to ensure that the executive does not have to provide fully articulated reasons for every decision that it makes, even where there is no question regarding the adequacy of the decision making. If this were not so, it would generate an enormous amount of unnecessary work and wasted effort for no benefit.

E.2 Analysis

43. I have set out earlier in this judgment the overall scheme of the Decision document. The section setting out the *"Conclusions of the Chairman"* comprises just less than two pages out of 58, and is in the following terms:

> *"G. CONCLUSIONS OF THE CHAIRMAN*
>
> 1. *There is no separation in Rule 3 of the Rules between filing and service of the notice of appeal. When appealing a decision one must file the Notice of Appeal and immediately serve the notice on all parties. It is a two-part process and failure to serve renders the Notice invalid.*
> 2. *There has been no valid reason for the failure to perfect the appeal notice and not immediately serve the Notice upon all parties as Rule 3 mandates.*
> 3. *As there is no justification for the delay in service of the Notice of appeal 42 days is an excessive period of time.*
> 4. *At the hearing before the Authority a detailed Memorandum was provided by the Objectors and legal representation was present wherein all of the concerns of the Objectors were aired.*
> 5. *Parliament has seen fit to permit 10 storey development in hotel/tourism zone 1. The setbacks were not changed. The issue of changes in the neighbourhood, the impact of the loss of daylight and sunlight and overshadowing were obviously contemplated by Parliament when it promulgated the change in height for buildings in hotel/tourism zones.*
> 6. *The reasons for refusal of the development were fully set out in the written Memorandum of the Objectors and the oral presentation by experienced planning counsel at the hearing and accordingly there was no breach of natural justice.*
> 7. *Nothing in the present arguments advanced by the Appellant suggest that there is a realistic prospect or likelihood of success if the extension-and later leave to appeal- is granted. All of the arguments had already been presented to the Authority and considered. Notwithstanding the objections presented to the Authority, it nevertheless resolved to grant planning permission for the development subject to the stated conditions in the Reasons for the Decision.*
> 8. *The fact that the Developer was not served with the Notice of Appeal when it was filed obviously led the Developer into believing that the appeal had not been perfected despite the knowledge of the filing gleaned from the Department of Planning. The appeal had not been perfected, and the Developer had proceeded accordingly, under the belief that the planning approval was unchallenged. I find that in exercising my discretion to extend time*

> *for filing would be prejudicial to the Developer who could not be compensated in costs and accordingly, accept the arguments of the Second Respondent concerning prejudice, save that the estimate of costs remain unsubstantiated.*
>
> *9. The balance of the submissions advanced by the Second Respondent with respect to denying the application for an extension of time brought by the Appellant are hereby generally accepted and are in accordance with the Reasons for Judgement of the CPA."*

44. This was then followed by the Chairman's *"Ruling"*, which was that:

> *"H. RULING*
>
> *All of the above factors 'militate against allowing the appeal to proceed out of time' in the words of Chairman Sara Collins in* Esso Standard Oil *(supra) and accordingly, the Appellant's application for an extension of time is dismissed."*

45. In my judgment, the following aspects of the Decision document are notable and relevant in respect of the Strata's complaint that the Chairman's reasons were inadequate.

46. The first point is that the Chairman's initial summary of the issues and relevant law completely omitted to record that the Appellants' primary case was that they did not require an extension of time on a proper construction of the Rules.

46.1 The Chairman described the issues as follows at pages 2-3 of the Decision:

> *"A. SUMMARY*
>
> *This is an application for the extension of time for filing of a Notice of Appeal on behalf of the Appellant with respect of an appeal of the decision of the Central Planning Authority […]*
>
> *The service requirements in Rule 3 were not complied with in breach of Rule 3. Accordingly, the Appellant has made this application for an extension of time for service of the Notice of Appeal, pursuant to Rule 17 […]"*

The Chairman set out the terms of Rule 17 but did not set out the terms of Rule 3, which was central to the Appellants' primary argument.

46.2 In the following section of the Decision, entitled *"The Case Law"*, the Chairman referred to three Cayman Islands cases concerning the grant of extensions of time, namely *Frank Hall Homes v PAT* [2001] CILR Note 5, *Esso Standard Oil v CPA* (unreported, 14/01/05) and *Murray-Forbes v IAT* (unreported, 02/01/24) but made no reference to *R v Soneji* or *Tudor v M25 Group* [2004] 1 WLR 2319, relied on by the Appellants.

46.3 Similarly, at page 5, under the heading *"The Instant Appeal"*, the Chairman again omitted to refer to the Appellants' primary argument that they did not need an extension of time:

> *"The Appellant did not file any affidavit evidence explaining why the service requirement in Rule 3 was not complied with. To date, no good reason (nor any reason) for non-compliance with Rule 3 has been put forward or advanced by the Appellant. Further, the delay in serving was not a mere few days; it was a delay of 42 days."*

The Chairman's failure properly to articulate the issues that were before him gives rise to an immediate concern that the Chairman did not fully grasp or grapple with what it was that he was being asked to decide.

47. Secondly, in the course of his recitation of the various parties' submissions, occupying some 50 pages out of the 58 pages in total, the Chairman did not engage in any discussion or analysis of those competing submissions. As a result, there is no indication within that part of the Decision as to what conclusions the Chairman reached on the important controversial issues of law between the parties, and how he had done so, such that the reader could identify and understand why he had reached those conclusions.

48. Thirdly, having recited the content of the parties' submissions without interpolating any analysis or commentary as the Chairman went along, the Decision omitted to include as an alternative a separate section dealing with the Chairman's analysis of the competing arguments. Instead, the Chairman moved straight to setting out his conclusions and ruling, which I have quoted earlier in this judgment.

49. Fourthly, in the section of the Decision setting out the Chairman's conclusions, there is again no discussion or analysis of the parties' competing cases, particularly on the issues raised by the Appellants as to whether they needed an extension of time at all and as to the merits of their intended appeal.

50. As to the issue of whether an extension of time was needed at all, in paragraph 1 of his conclusions the Chairman stated that an appellant must file and serve a Notice of Appeal in order for the appeal to be validly commenced. If it is assumed that the Chairman had in mind the Appellant's primary argument based on *R v Soneji*, namely that the Rules do not provide for any consequence for a failure

to serve and so no extension of time was needed, then it could be inferred from that paragraph that the Chairman rejected that part of the Appellant's case. However, I am not satisfied that this is a safe assumption to make given the Chairman's failure in his initial summary of the issues to recognise and record that that was the Appellant's case. Based on the terms of the Decision, the possibility cannot be excluded that the Chairman did not have the Appellant's primary case in mind and that he considered only the question whether he should grant the Appellants a retrospective extension of time to validate service of their Notice of Appeal.

51. Even if the Chairman did have the Appellants' primary case in mind, it is not apparent from his conclusions what thought the Chairman gave to *R v Soneji* and the other authorities relied upon by the Appellants. There is no explanation set out in the conclusions why the Chairman rejected the Appellant's argument and why he preferred the arguments of the CPA and the Developer, so that his reasons could be understood.

52. Mr Gayle submits that the reason the Chairman did not address the Appellants' reliance on *R v Soneji* in the Decision was because it was only raised by the Appellants the day before the hearing. I entirely reject that submission for the following reasons:

52.1 there is no evidence before me from the Chairman to support Mr Gayle's assertion as to the reason for this omission;

52.2 unless the tribunal concludes that it is inappropriate to allow the argument to be run as a matter of procedural fairness to the other parties, which it would positively have to consider and decide, the fact that an argument is raised late in the day provides absolutely no justification for the tribunal to omit to deal with it;

52.3 the Chairman took time to prepare his Decision, so he cannot be heard to say that he did not have sufficient time to consider and determine the issue raised by the Appellants, even if raised late; and

52.4 in fact, the Appellants had raised the issue of the proper interpretation of the Rules and whether they specified a consequence for a failure to serve the notice of appeal in their

skeleton argument dated 20 May 2025, it was merely the express reliance on *R v Soneji* as the source for that principle that was raised for the first time in Ms McClymont's speaking note.

53. Similarly, the Chairman's consideration and discussion of the arguments and counterarguments on the grant of an extension of time was cursory in the extreme. He did not state any reasons or explanation why he concluded that the Appellants' detailed arguments as to the issues that they wished to raise on appeal did not have wider importance for the Cayman Islands. He did not say why the Appellant's intended grounds of appeal, namely (a) the proper construction of Regulation 8(4) and its impact on building height; (b) the approach of the CPA to the consideration of the effect of proposed developments on the amenity of neighbouring properties; (c) and the CPA's approach of treating two non-contiguous parcels of land as if they were one when considering density, had no *"realistic prospect or likelihood of success"*. He did not express any view regarding the CPA's apparent error of law in failing to comply with section 41(5) of the National Conservation Act

54. The only aspect of the Chairman's conclusions that potentially provides a reason for his determination that the proposed appeal had no merit is in paragraph 7, where the Chairman said:

> *"Nothing in the present arguments advanced by the Appellant suggests that there is a realistic prospect or likelihood of success if the extension – and later leave to appeal - is granted. All of the arguments had already been presented to the Authority and considered. Notwithstanding the objections presented to the Authority it nevertheless resolved to grant planning permission for the development subject to the stated conditions in the Reasons for the Decision."*

However, the fact that the CPA had rejected the Appellants' objections to planning permission was irrelevant to whether there was merit in the Appellants' intended appeal against the CPA's decision on the ground that the CPA had erred in law. The Chairman's stated conclusion assumes that the CPA's interpretation of the law was correct, which was the very issue raised by the appeal.

55. I bear in mind, as Mr Gayle urges me to do, that reasons may be briefly stated and need only refer to the main issues in dispute, not to every material consideration. Even applying this approach, I do not consider that it is sufficient to say, as the Chairman did in paragraph 9 of his conclusions:

> *"9. The balance of the submissions advanced by the Second Respondent with respect to denying the application for an extension of time brought by the Appellant are hereby generally accepted and are in accordance with the Reasons for Judgement of the CPA."*

56. In my judgment, the Chairman's Decision does not satisfy the requirement that he provide adequate reasons, and it is not clear that he addressed his mind to the Appellants' primary argument at all. In my judgment, there is no adequate explanation of the Chairman's weighing of the competing arguments and of his reasoning in reaching the conclusions that he expressed. As a result, I am not satisfied that his conclusions were reached on relevant and rational grounds. Further, I agree with Mr Buttler that the Appellants have genuinely been substantially prejudiced by the failure to give reasons because the Decision is not such that the Appellants were able to understand why the application was decided as it was, why they had lost and whether they had any proper grounds to challenge the outcome on the basis of a misdirection.

E.3 Is there a real prospect that the Chairman might make a different decision?

57. I consider that, properly directed, there is a real prospect that the Chairman might make a different decision regarding the Appellants' application for an extension of time to serve their Notice of Appeal. For this purpose, it is apposite briefly to consider: (a) the length of the delay; (b) the reasons for the delay; (c) whether there is an arguable case for an appeal; (d) whether the case raises an important issue where the law requires clarifying; and (e) the degree of prejudice to the other parties if time is extended.

58. It is appropriate at this point that I deal with a submission made by Mr Buttler that *Frank Hall Homes v PAT* has been misinterpreted or misapplied to the extent that the Developer contends that it is part of the applicable legal test of *"good cause"* that the delay in question should be a matter of days only, and that that appears to be the approach adopted by the PAT when dealing with applications for extensions of time. I note that in Section B of the Decision addressing the case law, the Chairman said, relying on *Frank Hall Homes v PAT* as the source:

> *"Since the overriding principle for the courts is that justice must be done, the court may, in limited circumstances, grant an extension notwithstanding the absence of a good reason for the delay,* ***if*** *there is:*
> *a) a serious legal point to be tried; and*
> *b) the delay consists of a few days only."*
> (emphasis in original text)

In expressing this view, the Chairman appears to have been quoting the note of the judgment reported at [2001] CILR Note 5. However, it is clear, for the reasons set out in the following paragraphs, that that note inaccurately summarises the actual judgment in that case.

59. I have been provided with a copy of the unreported judgment of Panton J (Ag) in *Frank Hall Homes v PAT* (16/03/01). On pages 2 and 3 of his judgment, Panton J (Ag) set out the applicable law as follows:

> *"In* Finnegan v. Parkside Health Authority *(1998) 1 All ER 595, Hirst, LJ, in delivering the judgment of the Court, said:*
>
> > *'The absence of a good reason for the delay is not always and in itself a sufficient reason for the Court to refuse to exercise its discretion as the overriding principle is that justice must be done.'*
>
> *The following is the legal position:*
>
> 1. *Rules of Court providing a time-table for the conduct of litigation must be obeyed.*
> 2. *Where there has been non-compliance with a time-table, the Court has a discretion to extend time.*
> 3. *In exercising its discretion, the Court will consider –*
>   - *(i) the length of the delay;*
>   - *(ii) the reasons for the delay;*
>   - *(iii) whether there is an arguable case for an appeal; and*
>   - *(iv) the degree of prejudice to the other parties if time is extended.*
> 4. *Notwithstanding the absence of a good reason for delay, the Court is not bound to reject an application for an extension of time as the overriding principle is that justice has to he done."*

As indicated earlier in this judgment, I add to those four factors Smellie CJ's indication in *Streeter v Immigration Board* that it is also relevant whether the case raises an important issue where the law requires clarifying. This may be particularly significant in a planning context.

60. Acting Justice Panton then turned to the application of his statement of law to the facts of the case that was before him. It was in that context that he said in his conclusion at page 4 in the judgment:

> *"Notwithstanding the lack of a good reason for the delay in filing an appeal, when I consider that the delay is measurable in days and that there is a serious legal point that is worth arguing, l think that justice demands that the time for filing an appeal should be extended."*

61. It is clear from this that the fact that the delay was measurable in days was a factor that Panton J (Ag) took into account in determining what was the just outcome, but it is equally clear that the requirement that the delay be measurable in days is not part of the applicable legal test that

Panton J (Ag) set out or endorsed. The overriding consideration is that justice must be done. That may require a delay substantially longer than days to be forgiven if the other factors are strongly in favour of allowing the appeal to proceed. If the PAT's current practice is only to allow extensions of time if the delay is measurable in days, then that approach does not have a sound foundation in law and should not continue.

62. With this clarification of the applicable law in mind, looking first at the length of the delay, this is agreed before me to be 42 days. However, if the matter is remitted to the Chairman, then the length of the delay will be open for argument, and it appears that the Appellants intend to advance arguments that might result in a reduction to the length of the delay. Thus, the length of the relevant delay will be in issue and the actual length of the delay, as determined, may not carry the weight in the balance that the Chairman appears to have given it in the Decision in light of the correct application of *Frank Hall Homes v PAT*.

63. Secondly, I infer from Ms McClymont's statement to the Chairman at the hearing that the failure to serve was due to human error within the Appellants' attorneys' office. However, it does not follow that the consequence of that error should necessarily be visited upon the Appellants, particularly in a planning context where there are wider issues of the public interest in the proper development of the Cayman Islands at stake.

64. Thirdly, as to the merits of the appeal, my impression from a cursory review of the arguments intended to be advanced is that they seem to raise serious questions as to: the proper construction of Regulation 8(4); the extent to which the CPA should consider the loss of amenity to neighbouring properties; the extent to which the CPA should take into account the draft Final National Planning Framework; whether the CPA is right to treat non-contiguous parcels as one for the purpose of considering density of development; and whether the CPA erred in law in failing to impose the conditions on the planning permission required by the National Conservation Council in accordance with section 41(4) of the National Conservation Act.

65. Fourthly, it seems to me that each of the issues identified in the preceding paragraph has the potential to be of significant wider importance to the determination of planning applications in the Cayman Islands and can properly be said to raise an important issue where the law requires clarifying.

66. Lastly, the Developer's contention that it had suffered significant prejudice does not appear to be particularly cogent given that: (a) as I discuss later in this judgment, the purpose of service of the Notice of Appeal is to notify the existence of the appeal only; (b) the Developer was aware of the existence of the appeal on the very day that the Notice of Appeal was filed; (c) the Developer could have requested a copy of the Notice of Appeal if it considered it was material to see its contents but did not; (d) even if it had been served with the Notice of Appeal, the Developer would not have obtained any additional information that it did not already have; and (e) there does not appear to be any causative link between the prejudice complained of by the Developer and the failure to serve the Notice of Appeal.

67. Accordingly, I consider that there is a real prospect that, properly directed, the Chairman might make a different decision whether there is good cause to allow the Appellants the extension of time that they require to enable the Appellants' appeal to proceed to a determination on its merits.

E.4 Conclusion on adequacy of reasons

68. As a result, I stated on 20 March 2026 and now confirm that the Chairman failed to provide adequate reasons why he reached the conclusions that he sets out in the Decision, and there is a real chance of a different outcome. Accordingly, I quash the Chairman's decision on the Appellants' application for an extension of time and remit it to the Chairman of the PAT for him to consider the issues and to make his decision afresh on a proper basis.

F. Did the Chairman err in law in concluding that the Appellants required an extension of time for service of their Notice of Appeal in order to pursue their appeal?

69. I now turn to the second question raised by this application for judicial review, namely whether the Appellants required an extension of time at all, or whether, as Mr Buttler candidly submitted to me in oral argument, there is no consequence for an appellant who fails to serve a Notice of Appeal because the crucial factor is that the Notice of Appeal is filed. However, I must first address a preliminary objection raised by Mr Gayle that the question whether the Appellants required an extension of time was not properly before the Chairman and thus cannot be raised by the Strata on this judicial review.

F.1 The Chairman's preliminary objection

70. Mr Gayle argues that this issue is not properly before the court at all. As I understand his submissions, Mr Gayle contends that the Chairman was required to satisfy himself of his jurisdiction to grant an extension of time was engaged and to inform himself as to the proper approach to the exercise of that jurisdiction, but was not required as a matter of law to decide the Appellants' argument based on *R v Soneji* that there was no consequence stated in the Rules for a failure to serve a notice of appeal, such that they did not require any extension of time. Mr Gayle submits that that was a question that could only be determined by the Grand Court. Mr Gayle says that the Appellants should have sought a stay of the application for an extension of time from the Chairman and should have applied to the Grand Court for a declaration as to the proper construction of the Rules and the applicability of the *Soneji* principle. He argues that this aspect of the Strata's complaints should not properly be considered within the judicial review proceedings at all but should instead have been pursued by the Strata by way of an appeal.

71. Further, Mr Gayle submits that, notwithstanding the Appellants' contention that they did not require any extension of time, they voluntarily applied for an extension of time under Rule 17 and thereby submitted to the Chairman's jurisdiction to determine that question, but that question only. Mr Gayle's argument seems to amount to a contention that the Appellants should be treated as having

made an election, with the result that the Appellants waived or lost the ability to argue that they did not require any extension of time.

72. The difficulty with Mr Gayle's submission is that the Appellants repeatedly made clear throughout the preparation for and at the hearing that their primary case was that they did not need any extension of time:

72.1 On 11 February 2025, Ms McClymont wrote to the Chairman and the Developer (amongst others):

> *"We do not consider an application for an extension of time to be necessary […] Although I do not consider the application necessary, out of an abundance of caution I attach a [rule] 17 application […] I invite you to find that no extension of time is required or, if you find an extension is necessary, to grant [the] same."*

72.2 In the Appellants' submissions dated 11 February 2025, Ms McClymont wrote:

> *"2. It is submitted that, for reasons set out below, that an extension of time is not required, and invite Chairman to make that finding. However, in the event the Chairman finds an extension of time is required, we set out below the reasons such an extension should be granted."*

72.3 In the Appellants' submissions dated 20 May 2025, Ms McClymont wrote:

> *"3. For the reasons set out below it is submitted that:*
> *3.1. An extension of time for service of the Notice of Appeal on the Developer is not required; and*
> *3.2. Service on the Aqua Bay Strata is not required at all,*
> *and invite the Chairman to make these findings. However, in the event the Chairman finds against us in respect to either of the points above, we set out below the reasons that an extension of time for service should be granted."*

72.4 In her speaking note dated 27 June 2025, which she provided to the Chairman at the hearing, Ms McClymont wrote:

> *"1. There are two issues before the Tribunal at this hearing:*
> *(1) First, is the appeal valid despite the delay in serving the Appeal Notice on the developer?*
> *(2) Second, if not, should time be extended?*
> *2. […] the governing authorities on this point show that [the first] issue turns on a proper interpretation of the legislation – did Parliament intend that, absent immediate service of the appeal documents, the appeal would turn into a pumpkin – that it would become invalid? […]*

> *3. If I am right about that, then the appeal is valid and no extension of time is required. But if you conclude that I am wrong about that, then the Appellants require an extension of time. […]"*

Further, she concluded her speaking note, as I have already indicated in this judgment, by identifying the two issues for the Chairman:

> *"48. Drawing the threads together:*
> *(1) […] an extension of time is not required to enable the appeal to proceed.*
> *(2) Alternatively, if an extension of time is required, then this is the plainest possible case for an extension […]."*

73. Neither the Chairman, the Developer nor the CPA suggested at any time that the Chairman did not have jurisdiction to decide the question whether the Appellants required an extension of time. The Developer and the CPA both engaged with the Appellants' argument. The Chairman did not indicate at any stage that it was inappropriate for the Appellants to raise that argument before him, albeit it is unclear from the terms of the Decision whether he actually reached a conclusion on it. Accordingly, I consider that it is now far too late for Mr Gayle to seek to argue that the issue was not properly before the Chairman for him to determine.

74. Further, in my view, it is clear from the terms of Ms McClymont's correspondence and submissions that the Appellants were not waiving their primary position or making any form of election by making an application for an extension of time under Rule 17. It is beyond argument that that application was a fall-back position in case the Chairman concluded that there was a consequence of the Notice of Appeal being served late.

75. Turning to the question of principle, Mr Gayle's assertion as to the limitations on what the Chairman was required to do, that that did not include considering the application of the *Soneji* principle, and that the Appellants should have removed that question to the Grand Court for determination is unsupported by any authority. Mr Gayle does not explain in his submissions why the PAT and its Chairman do not have jurisdiction to determine the proper construction of the Rules under which they both operate and why the Appellants should have applied to the Grand Court for a declaration instead. Notwithstanding that I have not heard full argument on the point as a result of the way that it was presented by Mr Gayle, I consider that I should reject his submission for this reason too.

76. The PAT and the Chairman exercise a statutory jurisdiction. Accordingly, they do not have an inherent jurisdiction and are constrained to operate within the scope of the Act and the Rules. However, it does not follow from this that they are unable to consider and determine the proper interpretation of the Act and the Rules under which they operate so that they are able properly to exercise the powers given to them. In my view, it is an implied aspect of their jurisdiction that the PAT and the Chairman have power to do this: borrowing from the world of arbitration, a tribunal always has jurisdiction to determine the scope of its own jurisdiction and the nature of its powers, and I do not understand Mr Gayle to disagree with that proposition. However, if Mr Gayle's position were correct, every statutory tribunal or decision-making body faced with a question of the proper interpretation of its powers would have to pause its conduct of the proceedings and refer the matter to the Grand Court for an answer or require the parties to bring a construction action in the Grand Court. That is completely unworkable in practice and would have a seriously negative effect on the efficient conduct of the business of such tribunals and of the Grand Court, as well as generating unnecessary cost and delay for the parties.

77. Accordingly, I reject Mr Gayle's submission that the question whether the Appellants required an extension of time at all was not before the Chairman and/or was waived by the Appellants and cannot properly be considered as part of this judicial review application, where it is advanced as an error of law.

F.2 The statutory framework for appeals from the CPA to the PAT

(a) The jurisdiction

78. The appellate jurisdiction of the PAT is created by section 48(1) of the Act, which provides:

> *"**Appeals against decisions of [CPA]***
>
> *48. (1) Any person who has applied for planning permission, or who has objected to an application for planning permission after being notified of the application in accordance with regulations made under this Act, and who is aggrieved by a decision of the [CPA] in respect of the application, may, within fourteen days of notification of that decision under section 40, or within such longer period as the [PAT] may in any particular case allow for good cause, appeal against that decision to the [PAT] on the ground that it is —*
>
> *(a) erroneous in law;*
>
> *(b) unreasonable;*
>
> *(c) contrary to the principles of natural justice; or*

> *(d) at variance with any development plan having effect in relation thereto,*
>
> *but not otherwise; and such appeal shall be heard by the [PAT] within six months of such appeal being lodged, and such appeal shall be heard and determined based on the record of the hearing to which it relates in accordance with any rules made hereunder."*

79. Accordingly, there is a 14-day period permitted for commencing an appeal, which can be extended by the PAT for *"good cause"*. An appeal which is commenced within the 14 days or within such extended period as the PAT allows is therefore valid. The Act requires the appeal to be heard and determined based on the record of the hearing to which it relates but does not specify any other procedural requirements other than that the appeal should be heard and determined within six months. I accept Mr Buttler's submission that the Act does not specify any specific consequences for failing to comply with its requirements.

(b) The procedural requirements for conducting an appeal

80. Section 48(6) of the Act obliges the Chief Justice to make rules to regulate the conduct of appeals to the PAT. The current Rules were made on 20 March 1985. As Mr Buttler points out, there are some unfortunate inconsistencies between the Rules and the Act, where the Rules do not appear to have been drafted or updated to reflect the terms of the Act: for example Rule 3 references section 45(1) of the Act, whereas it is section 48(1) of the Act that provides the appeal jurisdiction, and Rule 3 states the time for an appeal as 10 days, rather than 14 days as provided in section 48(1) of the Act. The Rules must therefore be read with an eye to the terms of the Act that, as the primary legislation, will override the Rules where there are inconsistencies between them.

81. Rule 2 of the Rules defines *"executive secretary"* as the executive secretary of the CPA, *"Permanent Secretary"* as the Permanent Secretary of the Ministry of Education, Aviation and Planning, and *"Tribunal"* as the PAT.

82. Rules 3 to 6 provide the procedural framework for the procedural steps required to pursue an appeal from the CPA to the PAT, as follows and with the required corrections to Rule 3:

> *"**Appeal to the Tribunal***
>
> *3. An appeal to the Tribunal under section [48](1) shall be made by notice in writing, hereinafter referred to as a 'Notice of Appeal', signed by the appellant or his attorney-at-law. The Notice of Appeal shall be filed in the office of the Permanent Secretary within the period of [fourteen] days*

stipulated in the above mentioned subsection and immediately thereafter a copy thereof shall be served by the appellant upon the executive secretary and upon all parties who may have filed objections or been heard at the hearing of the application to which the appeal relates.

Procedure on service of Notice of Appeal

4. The executive secretary shall, within fourteen days after service upon him of the Notice of Appeal, prepare and forward to the Permanent Secretary and to the appellant (or his attorney-at-law) an indexed brief containing copies of all documents, correspondence and other papers and exhibits which were presented to the Central [Planning] Authority on the hearing of the application to which the appeal relates as well as a statement in writing from the Chairman of the Central Planning Authority stating the reasons for its decision.

Filing of grounds of appeal

5. (1) The appellant shall, within fourteen days of the service upon him of the brief mentioned in rule 4, file in the office of the Permanent Secretary —

(a) the grounds of appeal upon which he intends to rely; and

(b) the form or order he seeks.

(2) A copy of the grounds of appeal shall be served by the appellant on all parties to whom the Notice of Appeal has been addressed.

Preparation of Record of Appeal

6. (1) The Permanent Secretary shall, upon being satisfied that rules 3, 4 and 5 have been complied with, prepare a Record of Appeal and set down the appeal for hearing by the Tribunal and shall give notice thereof to the chairman of the Tribunal, all members thereof, the appellant, the executive secretary and all persons entitled to be served with the Notice of Appeal.

(2) The Record of Appeal referred to in sub-rule (1) shall comprise the following documents-the Notice of Appeal, the brief prepared under rule 4, the grounds of appeal, the form or order sought and any other document that the Chairman of the Tribunal may direct shall be included therein. The Record shall be bound, or otherwise securely fastened together, and the pages numbered in the order in which they appear therein.

(3) The Permanent Secretary shall give copies of the Record of Appeal to the Chairman of the Tribunal, all members thereof, the appellant and the executive secretary at the same time as the notification under sub-rule (1).”

83. In general terms, I accept Mr Buttler’s analysis of the scheme of the Rules, as follows:

83.1 Under Rule 3, the appellant must file a signed Notice of Appeal with the Permanent Secretary within 14 days from notification of the CPA’s decision.

83.2 The Notice of Appeal can only record that the appellant is appealing against the CPA’s decision. It is not required to identify the grounds of appeal, nor any arguments in support. This is explicable because neither the requirement for the CPA to provide its formal reasons for its decision under Rule 4 nor the requirement in Rule 5 to serve the grounds of appeal will have been triggered at the time that the Notice of Appeal must be filed.

83.3 The appellant must serve the Notice of Appeal on the executive secretary and on those who filed objections or were heard before the CPA *"immediately"*, which is not defined.

83.4 The appellant must serve the Notice of Appeal on the executive secretary in order to trigger the executive secretary's obligations in Rule 4: (a) to obtain the statement from the Chairman of the CPA's formal reasons for its decision; and (b) to prepare the indexed brief containing the documents before the CPA.

83.5 As far as other persons are concerned, the Notice of Appeal does not trigger any required response from or action by them. This factor, coupled with the limited content of the Notice of Appeal, leads me to accept Mr Buttler's submission that the purpose of service on such other persons must be to provide notification of the existence of the intended appeal only.

83.6 Following service of the Notice of Appeal, the executive secretary: (a) must obtain the Chairman of the CPA's statement as to the CPA's reasons for its decision; (b) must prepare the indexed brief containing the documents before the CPA; and (c) within 14 days must provide the Permanent Secretary and the appellant with both the Chairman's statement and the indexed brief.

83.7 The executive secretary's compliance with Rule 4 is essential to enable the appeal to progress because: (a) the appellant needs the formal statement of reasons in order to prepare the grounds of appeal under Rule 5; and (b) the Permanent Secretary needs the brief in order to prepare the Record of Appeal required by Rule 6. It is notable that Rule 4 does not require the executive secretary to provide copies of the CPA's reasons nor the brief to any other person, and clearly the Rules do not require any action from any other person at this stage.

83.8 Rule 5 requires the appellant to file grounds of appeal with the Permanent Secretary within 14 days of receipt of the statement of reasons. This is essential to the progress of the appeal because Rule 6 requires that the grounds of appeal form part of the Record of Appeal to be prepared by the Permanent Secretary.

83.9 The appellant must serve the grounds of appeal on the other parties, but Rule 5 does not provide any date by which the grounds of appeal should be served, and no action is required

from any other person in response to receipt of the grounds of appeal. The purpose again appears to be one of notification only.

83.10 Rule 6 requires the Permanent Secretary to prepare the Record of Appeal, once they are satisfied that Rules 3, 4, and 5 have been complied with, to set down the appeal for hearing and to give notice of the hearing to the various participants.

83.11 More generally, none of Rules 3, 4, 5 or 6 specifies any consequence for failure to comply with their particular requirements.

84. Rule 7 then provides that the appellants and all persons to whom the Notice of Appeal was addressed shall be entitled to be heard at the hearing of the appeal. Notably, the right to be heard in Rule 7 is not predicated on the Notice of Appeal having been served on the person but simply that the Notice of Appeal was addressed to them.

(c) The power to extend time

85. Rule 17 provides a power to extend time, as follows:

> *"17. Time may be extended for good cause shown in the case of appeals to the, Tribunal, by the Chairman, and in the case of appeals to the Grand Court, by a judge."*

Rule 17 is not specific to any particular situation contemplated within the Rules. It applies generally to any time limit stated within the Rules – it is properly described as a catch-all provision.

86. Mr Buttler submits that Rule 17 does not provide any indication of the intended consequences of a failure to comply with any of the time limits specified in the Rules in respect of which it is available. Thus, he says, it is necessary to focus instead on the terms of the particular rule that imposed the time limit in question. I will return to this point later in this judgment.

87. Drawing on *Frank Hall Homes Ltd v PAT* and *Finnegan v Parkside Health Authority* [1988] 1 All ER 595, which is relied upon in that case, it is common ground that in determining whether good cause has been shown, the Chairman must ensure that justice is done having regard to all the circumstances of the case. However, as I have explained earlier in this judgment, it is not right to impose an additional condition that the delay in question must be a matter of days only: the length

of the delay is simply one factor that must be considered with the other relevant factors in deciding what is just.

F.3 The Soneji principle

88. The *Soneji* principle emerged from the articulation by the English House of Lords in *R v Soneji* [2006] 1 AC 340 of what was as described by Lord Steyn at paragraph 14 as *"the core problem"* of statutory interpretation:

> *"14. A recurrent theme in the drafting of statutes is that Parliament casts its commands in imperative form without expressly spelling out the consequences of a failure to comply. It has been the source of a great deal of litigation. In the course of the last 130 years a distinction evolved between mandatory and directory requirements. The view was taken that where the requirement is mandatory, a failure to comply with it invalidates the act in question. Where it is merely directory, a failure to comply does not invalidate what follows. There were refinements. For example, a distinction was made between two types of directory requirements, namely (1) requirements of a purely regulatory character where a failure to comply would never invalidate the act, and (2) requirements where a failure to comply would not invalidate an act provided that there was substantial compliance."*

89. Lord Steyn referred to the more flexible approach adopted by courts following the judgment of Lord Hailsham in *London & Clydeside Estates Ltd v Aberdeen District Council* [1980] 1 WLR 182 and other cases applying that judgment, whereby the court would focus on the consequences of non-compliance, and, taking into account those consequences, pose the question whether Parliament should be taken to have intended the outcome to be total invalidity. Having considered a range of relevant English and commonwealth judgments, Lord Steyn concluded at paragraph 23:

> *"23. Having reviewed the issue in some detail I am in respectful agreement with the Australian High Court that the rigid mandatory and directory distinction, and its many artificial refinements, have outlived their usefulness. Instead, as held in* Attorney General's Reference *(No 3 of 1999), the emphasis ought to be on the consequences of non-compliance, and posing the question whether Parliament can fairly be taken to have intended total invalidity. That is how I would approach what is ultimately a question of statutory construction."*

The other Law Lords gave concurring judgments.

90. It is not disputed that the *Soneji* principle is part of the law of the Cayman Islands. For example, it has been applied in the Grand Court by Smellie CJ (as he then was) in *Premier Assurance Group SPC Ltd v Providence Insurance Company I.I* [2023] 2 CILR 1, by Kawaley J in *Re Real Estate and Finance*

Fund [2022] 2 CILR 272 and by Kawaley J again in *R (Infinity Broadband Ltd) v The Utility Regulation and Competition Office* [2025] CIGC (Civ) 25.

F.4 The Strata's case as to the application of the Soneji principle

91. Mr Buttler relied on the recent decision of the UK Supreme Court in *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2025] UKSC 27. Lords Briggs and Sales, with whom the other Justices of the Supreme Court agreed, said in paragraph 68 of their joint judgment:

> *"68. In our view the correct approach in a case where there is no express statement of the consequences of non-compliance with a statutory requirement is first to look carefully at the whole of the structure within which the requirement arises and ask what consequence of non-compliance best fits the structure as a whole."*

However, beyond this general statement of principle, I do not find *A1 Properties* to be of particular assistance because it is entirely focussed on an analysis of the statutory scheme in issue in that case, namely the right to manage provisions in Chapter 1 of Part 2 of the English Commonhold and Leasehold Reform Act 2002. The Justices of the Supreme Court's conclusions as to Parliament's intentions regarding whether failures to comply with its requirements had the result that a particular step in the process was void, voidable or valid do not provide any general guidance that is helpful in resolving the issue in this case.

92. Mr Buttler also relied on the judgment of Hobhouse LJ in *Belvedere Court Management Ltd v Frogmore Developments Ltd* [1997] QB 858 before the English Court of Appeal. Hobhouse LJ suggested that:

> *"By way of final comment I would add that I am strongly attracted to the view that legislation of the present kind should. be evaluated and construed on an analytical basis. It should be considered which of the provisions are substantive and which are secondary, that is, simply part of the machinery of the legislation. Further, the provisions which fall into the latter category should be examined to assess whether they are essential parts of the mechanics or are merely supportive of the other provisions so that they need not be insisted on regardless of the circumstances. In other words, as in the construction of contractual and similar documents, the status and effect of a provision has to be assessed having regard to the scheme of the legislation as a whole and the role of that provision in that scheme-for example, whether some provision confers an option properly so called, whether some provision is equivalent to a condition precedent, whether some requirement can be fulfilled in some other way or waived. Such an approach when applied to legislation such as the present would assist to enable the substantive rights to be given effect to and would help to avoid absurdities or unjustified lacunae. […]"*

Whilst this is strictly an *obiter dictum*, it appears to be generally accepted as a valid approach to considering the issues of statutory construction that arise.

93. Mr Buttler submits that the essential parts of the planning appeal framework, without which an appeal cannot progress, comprise:

93.1 filing the notice of appeal, which is necessary to commence the appeal process;

93.2 serving the notice of appeal on the executive secretary in order to trigger the executive secretary's duty to prepare the record of CPA's reasons and the brief;

93.3 obtaining the CPA's reasons and preparation of the brief by the executive secretary;

93.4 providing the CPA's reasons and the brief to the permanent secretary and to the appellant;

93.5 preparing the grounds of appeal and filing it with the permanent secretary;

93.6 preparing the record of the appeal;

93.7 setting the appeal down for hearing and giving notice of the hearing to the participants.

He submits that all other aspects of the process are supportive of the prosecution of the appeal and are for information purposes only. Mr Buttler contends that the rights of interested parties, such as developers, are safeguarded by requiring that the permanent secretary give notice that the appeal is being set down for hearing. He says that the Rules do not require any involvement by other parties (apart from the chairman of the CPA's obligation to provide the CPA's reasons), for example in filing a respondent's notice or skeleton arguments. However, any other party will have the opportunity to prepare and make any representations that they wish once they have received the record of the appeal.

94. In particular, Mr Buttler argues that the requirement for service of the notice of appeal upon a developer is not required by the Act at all and is not an essential part of the procedural regime of the Rules. He submits that a developer will always be made aware of the existence of an appeal because the permanent secretary will serve the record of the appeal under Rule 6 and there is no risk that a developer will lose a fair opportunity to oppose the appeal simply because they are not served with a notice of appeal.

95. Mr Buttler says that in this case, the position is even stronger because the Developer was informed that a Notice of Appeal had been filed on the very day that that happened: the only issue is that the Developer was not served with a copy. However, in my view, this point goes to the question of prejudice suffered by the Developer and is more apt to be considered as part of the exercise of determining whether there is good cause to grant an extension of time, assuming that one is necessary.

96. Mr Buttler then points out that Rules 5 and 3 are similar in nature, both requiring service of certain documents, but Rule 5 cannot have the effect of invalidating the appeal since no time limit is specified at all. He argues that it would be anomalous for Rule 3 to have a different effect.

97. Next, Mr Buttler submits that the existence of the power to extend time in Rule 17 is not indicative that a failure to comply with Rule 3 will render the appeal invalid for four reasons. First, because it would have been easy to have drafted Rule 17 to have that effect by including reference to validity / invalidity, similarly to the language of GCR O.6. Secondly, Rule 17 does not contain any express statement of the consequences of non-compliance, such that the interpretive exercise is still required. Thirdly, Rule 17 is included in the Rules to provide the remedy required by section 48(1) of the Act and is of general application, and it cannot be right that a failure to comply with the time limits in the Rules of any kind should render the appeal invalid. For example, in this case, the executive secretary was nearly two weeks late in delivering the appeal brief to Nelsons, but it cannot seriously be suggested that the executive secretary's delay has the effect of rendering the appeal invalid. Fourthly, because Rule 17 is of general application, it is necessary to look at the terms of the Rule that has been breached, rather than Rule 17, to determine the intended consequences of that breach.

98. Turning to the requirement that service should be *"immediate"*, Mr Buttler argues that this does not identify a precise time by which to judge whether or not an appeal has become invalid, and that this lack of certainty is another factor against a failure to serve being treated as giving rise to automatic invalidity of the appeal.

99. Finally, Mr Buttler argues that the Strata's construction of Rule 3 does not leave the PAT toothless in the face of breaches of the supportive parts of the procedural machinery. He refers to section 48(2) of the Act, which he says confers broad powers on the PAT to do what it considers just, including by making adverse cost orders. He also notes that it would also be open to the Chief Justice to supplement or to update the Rules if thought desirable.

F.5 The Chairman's case in response

100. Mr Gayle's overall submission on behalf of the Chairman is that the Chairman was correct to determine that the Appellants required an extension of time in respect of service of their Notice of Appeal. Mr Gayle argues that, properly construed, Rule 17 indicates that a failure to serve a notice of appeal does not automatically invalidate the proceedings, as contended by Mr Buttler: the fact that the Chairman has power to extend time is inconsistent with automatic invalidity and indicates that the appeal remains live unless and until the Chairman refuses an extension of time.

101. Secondly, and of more substance, Mr Gayle argues that Rule 17 provides the statutory mechanism by which non-compliance with any of the time limits in the Rules may be cured. Accordingly, he submits that the principle in *R v Soneji* is simply not applicable because the statutory scheme does provide a consequence for non-compliance with the requirements of the Rules, namely the need to obtain an extension of time based on a showing of good cause under Rule 17. In support of this argument, Mr Gayle relies on the judgment of the English Court of Appeal in *Avon Freeholds Ltd v Cresta Court E RTM Co Ltd* [2025] EWCA Civ 1016.

102. Thirdly, if the *Soneji* principle is engaged at all, Mr Gayle submits that service of the notice of appeal is part of the essential machinery of the statutory scheme applying to appeals to the PAT rather than simply being supportive. He says that service ensures that potentially affected parties, particularly the developer whose planning permission is under challenge, are promptly notified of the existence of the appeal so that they may take steps to protect their interests. Mr Gayle argues that the requirement to serve the notice of appeal is an aspect of procedural fairness and natural justice to enable interested parties to protect their interests and participate in the appeal process, and so cannot be characterised as being supportive only.

F.6 Analysis and decision

103. In my judgment, Mr Gayle is right that a *Soneji* analysis is not appropriate in relation to an appellant's failure to comply with the filing or service requirements in the Rules governing appeals to the PAT. This is because the Rules do provide a consequence for a failure to comply with those requirements, namely that the appellant must seek and obtain an extension of time under Rule 17 on the basis of good cause. It cannot sensibly be said that the statutory scheme fails to specify the consequence of failure where the Rules themselves provide a mechanism by which that very default is addressed.

104. I am supported in this conclusion by *Avon Freeholds Ltd v Cresta Court E RTM Co Ltd* [2025] EWCA Civ 1016. Like *A1 Properties*, this case concerned the right to manage provisions in Chapter 1 of Part 2 of the English Commonhold and Leasehold Reform Act 2002. At paragraph 72, Sir Launcelot Henderson, with whom the other members of the English Court of Appeal agreed, explained that *A1 Properties* concerned a situation where the consequence of failure to comply with the procedural requirement in question was not expressly stated by Parliament in the legislation, with the result that the *Soneji* principle should be applied. However, he distinguished that situation from the one facing the Court of Appeal in *Avon Freeholds Ltd* on the ground that the consequence of a failure to comply with the different statutory provision in issue on that appeal was clear. Sir Launcelot Henderson explained the broader principle in play at paragraphs 76-78 of his judgment, which I adopt and endorse:

> *"76 The importance of the key principle that there is no room for a* Soneji *analysis where Parliament has expressly stipulated the consequences of non-compliance is a theme to which the Supreme Court returned in* A1 Properties *when considering some subsidiary arguments advanced by Mr Bates for the intermediate landlord at paras 101-104: see in particular para 103 ('Parliament has not expressly stipulated what the consequence of non-compliance with those obligations should be, so the* Soneji *analysis is applicable'); and para 104 where the court said:*
>
> > *'The same analysis applies. These are simply examples of provisions where Parliament has stated in terms what the outcome of a failure of compliance with certain of the procedural rules should be, thereby making it unnecessary and inappropriate to conduct a Soneji analysis. But where Parliament has not so stipulated, an analysis according to the approach in* Soneji *is required.'*
>
> *77 At the risk of stating the obvious, it is worth spelling out why the distinction drawn in* A1 Properties *must in my judgment be correct. When construing a statutory scheme, the task of the court or tribunal is to seek the meaning of the words used by Parliament in accordance with the principles of interpretation laid down in the case law. Those principles were authoritatively restated by the Supreme Court in* R (O) v Secretary of State for the Home Department *[2023] AC 255 at paras 29-31 per Lord Hodge DPSC (with whom Lord Briggs, Lord Stephens, Lady Rose*

> *JJSC and Lady Arden agreed). That guidance emphasises that 'the words which Parliament has chosen to enact as an expression of the purpose of the legislation' are 'the primary source by which meaning is ascertained' (para 29), and although external aids to interpretation play a secondary role, 'none of these external aids displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity' (para 30). Further, the 'intention of Parliament' is an objective concept, not subjective, and 'is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used' (para 31, citing the speech of Lord Nicholls in* R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd *[2001] 2 AC 349, 396). It follows that where the language used by Parliament to state the consequence of non-compliance with a procedural requirement is clear, unambiguous and does not produce absurdity, it is the duty of the court or tribunal to interpret and apply that language accordingly. That is what the rule of law requires, and the court or tribunal would be overstepping its constitutional boundaries if it attempted to substitute for the language of Parliament an interpretation which in its view would produce a more reasonable result on the facts of the individual case before it.*
>
> *78 By the same token, it is only where Parliament has not expressly stated the consequences of non-compliance that there can be any room for a* Soneji *analysis designed to determine objectively what intention should be imputed to Parliament to fill the gap left by its silence on the point."*

105. Further, I do not accept Mr Buttler's argument that the service requirement in Rule 3 is merely supportive of the statutory mechanism and, because its purpose is notification only, that it is of no consequence whether the interested parties learn of the intended appeal as a result of receipt of the notice of appeal or only at the later stage of receipt of the Record of the Appeal. I consider that Mr Gayle is right to argue that the requirement for notification by way of service of the notice of appeal has potential real-world consequences, as well as raising issues of natural justice. For example, the developer may wish to consider whether it is willing to take the commercial risk of proceeding with the intended development in the face of the pending appeal or whether it is in their best interests to defer taking any steps in reliance on the planning permission until the appeal to the PAT has been determined. If the developer does not receive the notice of appeal, it cannot consider its position and make a decision on a properly informed basis and may suffer real prejudice as a result. Accordingly, in my judgment, the service requirement in Rule 3 is an essential part of the substantive appeal machinery, and the requirement to obtain an extension of time under Rule 7 is properly applicable to a failure to serve in time.

G. Disposal

106. For the reasons that I have set out in detail in this judgment, I conclude that:

106.1 as a matter of law, the Appellants before the PAT did need to obtain an extension of time for service of their Notice of Appeal upon the Developer;

106.2 there was no error of law by the Chairman in requiring the Appellants to do so, notwithstanding the inadequacy of his apparent consideration of and reasoning for that conclusion;

106.3 the Chairman failed to give adequate reasons for his refusal to grant the Appellants an extension of time for service of their Notice of Appeal;

106.4 there is a real possibility that, properly directing himself, the Chairman might reach a different conclusion on the question whether to grant the Appellants the extension of time for service of their Notice of Appeal that they required; and

106.5 accordingly, I will quash the Chairman's decision and remit it to the Chairman for him to reconsider the question whether the Appellants can show good cause for an extension to serve.

107. I will hear the parties further on any consequential matters and as to costs.

H. Postscript – the proper approach of an attorney when submitting proposed corrections to a draft judgment

108. In the usual way, a draft of this judgment was circulated to the attorneys for the parties to give them the opportunity to correct any obvious typographical or minor factual errors before the judgment was finalised and handed down. The attorneys were directed to agree and submit a joint list of corrections. They did not. The CPA submitted one typographical correction. The Strata identified two typographical corrections. The Strata stated that they had not been able to agree a joint list of corrections because the Chairman and the Developer had submitted their list directly to the court without contacting the Strata first. The Strata objected to those proposed corrections.

109. One of the Chairman and the Developer's corrections was obviously proposed by the Developer and is properly described as a minor typographical error. The remainder of the proposed corrections appear to have been the responsibility of the Chairman's legal team, and I infer that they were formulated under the supervision of and with the approval of Senior Crown Counsel Mr Nigel Gayle, if not prepared by Mr Gayle himself, in his capacity as the lead attorney acting for the Chairman. The proposed corrections included twenty attempts to suggest that I re-write passages in the judgment and to provide revised wording for use in the judgment. Multiple further revisions to the text were proposed in redline edits. The proposals also included an attempt on behalf of the Chairman to expand upon a submission previously made and to refer to a new authority to support that proposition, added by way of footnote. Of those proposed changes to the draft judgment, only one was properly the correction of a minor error in the draft judgment that had not been identified by the other parties. Surprisingly, this approach was then replicated in the response of the Attorney General's Chambers to circulation of the draft of this postscript.

110. In the circumstances, it is clearly necessary that I reiterate that this is not the purpose of circulating a draft judgment. The purpose of doing so is to give the parties the opportunity to correct typographical errors and obvious factual errors and to prepare for consequential matters such as agreeing orders, submissions on consequential issues, and preparations for the publication of the judgment. The practice is designed to promote efficiency and ensure accuracy before the judgment is formally handed down.

111. It is not for the parties to try to re-open or re-argue the case, to introduce new authorities, to re-write the judgment or request revisions, or for a party to try to adjust the wording of the judgment for its own purposes. Only in rare and exceptional circumstances, such as when the draft judgment contains detrimental observations based on a misunderstanding, or a point was not properly argued or considered, should a request be made for a substantive change. In such cases, all other parties must be immediately informed of the intention to request a substantive change to allow them to object if they wish.

112. The principle was set out clearly by Lord Judge CJ in the English case of *R (Mohamed) v Foreign Secretary (No 2)* [2010] EWCA Civ 158 at paragraph 4 where he said:

> *"4. The primary purpose of this practice is to enable any typographical or similar errors in the judgments to be notified to the court. The circulation of the draft judgment in this way is not intended to provide an opportunity to any party (and in particular the unsuccessful party) to reopen or reargue the case, or to repeat submissions made at the hearing, or to deploy fresh ones. However on rare occasions, and in exceptional circumstances, the court may properly be invited to reconsider part of the terms of its draft. (see for example* Robinson v Fearsby *[2003] EWCA Civ 1820 and* R (Edwards) v The Environment Agency *[2008] 1 WLR 1587). For example, a judgment may contain detrimental observations about an individual or indeed his lawyers, which on the face of it are not necessary to the judgment of the court and appear to be based on a misunderstanding of the evidence, or a concession, or indeed a submission. As we emphasise, an invitation to go beyond the correction of typographical errors and the like, is always exceptional, and when such a course is proposed it is a fundamental requirement that the other party or parties should immediately be informed, so as to enable them to make objections to the proposal if there are any."*

113. This principle has been re-stated and endorsed in numerous cases in England and Wales, including recently by the Court of Appeal in *Supponor Ltd v Aim Sport Development AG* [2024] EWCA Civ 396, where Birss LJ added at paragraph 85 that it is not for a party to try to adjust the wording of the judgment for its own purposes.

114. This is not to detract from the separate ability of a party to seek clarification of a judgment, where that clarification might avoid the necessity for an appeal. However, none of the suggested revisions to the draft judgment made on behalf of the Chairman fall into this category.

115. As a result of the approach taken by the Chairman's legal team, the court has had to spend several hours of its limited resources unnecessarily considering the Chairman's requests for substantial alterations to the draft judgment, and on preparing and finalising this postscript, with a consequential effect on the availability of that time to deal with other litigants' cases. That is to be deprecated in the strongest terms.

Dated 3 June 2026

THE HONOURABLE JUSTICE JALIL ASIF
JUDGE OF THE GRAND COURT