



AND COURT OF THE CAYMAN ISLANDS

CAUSE NO: _____ OF 2025

MATTER OF the Development and Planning Act (2021 Revision) and the Development Regulations (2024 Revision) (the "*Regulations*")

AND IN THE MATTER OF an Appeal pursuant to section 48(4) of the Development and Planning Act (2021 Revision) (the "*Act*") and Order 55 of the Grand Court Rules (GCR)

AND IN RESPECT OF AN APPEAL against or to challenge the decision of the Planning Appeals Tribunal (PAT) dated 7 November 2025 (the "**Impugned PAT Decision**"), which quashed with costs, the decision of the Central Planning Authority (CPA) in respect of an application for Block 11D, Parcels 37 and 45 (P22-0735). The CPA, the Second Appellant, in exercise of its planning judgment and discretion and in purported compliance with the legislative framework, including the binding considerations under regulation 8(13)(b) of the *Regulations*, granted planning permission with a variance to the First Appellant in a decision made on 19th March, 2025 and communicated in the CPA's decisional letter dated 7th April, 2025 (the "**CPA Decision**").

BETWEEN:

(i) **INVINCIBLE INVESTMENT CORPORATION**

(ii) **THE CENTRAL PLANNING AUTHORITY**

Appellants

- and -

MEOW LIMITED

Respondent

PLANNING APPEALS TRIBUNAL

Interested Party

NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Grand Court at the Law Courts, George Town, Grand Cayman will be moved on _____ at _____ or as soon thereafter as counsel can be heard, by counsel on behalf of the Appellants, for the following orders and/or reliefs:

1

This **Notice of Originating Motion - Grand Court Appeal** was issued jointly on behalf of the First and Second Appellants, by Waide DaCosta, Attorney-at-Law on behalf of the First Appellant, whose address for service is at Unit #1, Eucalyptus Bldg., Shedden Rd., George Town, P.O. Box 591, Grand Cayman KY1-1502, Cayman Islands and the Attorney General's Chambers on behalf of the Second Appellant, whose address for service is 4th Floor, Government Administration Bldg., 133 Elgin Avenue, George Town, P.O. Box 136, George Town, Grand Cayman KY1-9000, Cayman Islands.

- (a) That the Impugned PAT Decision be reversed, overruled or otherwise set-aside, for *inter alia*, being erroneous in law and/or unreasonable on the undisputed evidence, in many material respects, and the CPA Decision be upheld;
- (b) Alternatively, that the Impugned PAT Decision be overruled in part and modified to remove the erroneous aspects and findings and discussions beyond paragraphs 38, and to conclude given the findings up to part of paragraph 38, that, the decision that rationally flows from those findings of the PAT, is that:

The CPA acted *intra vires* the *Act* and *Regulations*, lawfully and exercised its discretion rationally and reasonably on the evidence. That, the CPA Decision in exercise of its unchallenged planning judgment and discretion on the evidence, that “*the proposal will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighbourhood, or to the public welfare*” without more did in fact constitute “*sufficient reason and an exceptional circumstance*” to grant a variance under regulation 8(13)(b)(iii) of the *Regulations*. Although the CPA had found several other reasons, such as the tourism product and traffic impact considerations, (which the PAT agreed at paragraphs 37 and 38, that at least two of which were relevant such considerations (to have so satisfied)), those would only further justify the decision to grant the variance and to support the scope of the variance granted. The said “*regulation 8(13)(b)(iii) no detriment*” factor singly met the threshold to grant a variance. The CPA, in so doing, supported by several other collective reasons in support, acted lawfully and *Wednesbury* reasonably in its decision to grant the variance. There is no evidence that the CPA’s decision to grant the planning permission and variance in those circumstances was beyond what any other reasonable tribunal could have done. The scope of the variance granted was within the CPA’s sole discretion and as was properly found by the PAT at paragraphs 24 and 27 to be unfettered under the legislative framework. Accordingly, the CPA Decision is upheld and the Planning appeal dismissed;

- (c) A stay of the Impugned PAT Decision, inclusion of its paragraph 69 (the order in respect of costs), pending determination on this appeal; and
- (d) Costs of and incidental to this appeal, and in the proceedings before the PAT, to the Appellants herein (First and Second Respondents in the PAT proceedings), on the standard basis, to be taxed, if not agreed.

AND FURTHER TAKE NOTICE that the Grounds of this Grand Court appeal are, that:

- (i) The Impugned PAT Decision is erroneous in law, unreasonable, at variance with the relevant development plan, and/or contrary to the principles of natural justice.
- (ii) In respect of the order for stay, pursuant to GCR Order 55, rule 3(3), the bringing of this appeal does not operate as a stay of the Impugned PAT Decision. The appeal is compellingly strong and meritorious, with a real (realistic not fanciful) prospect of success, as disclosed by the detailed grounds of appeal. If not granted, the Appellants (jointly or severally) would be unfairly prejudiced, suffer irreparable harm, and/or the fruits of the judgment in this appeal in their favour may be rendered nugatory or otherwise impeded or compromised, given that, *inter alia*, the development for which the planning permission is required is time sensitive, especially to capitalise on the tourism product and economic prospects.

Detailed Grounds of the Appeal

- (iii) As disclosed by the Impugned PAT Decision, the PAT acted erroneously in law or erred in law in many material respects in making its findings and reaching its ultimate conclusion to quash the CPA Decision, particularly its findings and application of the law to the undisputed evidence, either in the statement of and/or its findings having purportedly applied the law, including its construction and application of the relevant legislative framework, especially regulation 8(13)(b)(i)-(iii) of the *Development and Planning Regulations (2024 Revision)* (the “Regulations”).
- (iv) The PAT, having made findings and pronouncements of law at especially paragraphs 24, 27, parts of 37 and 38, the only rational decision that flowed from such reasoning should have been to uphold the CPA Decision and to refuse /dismiss the planning appeal. The said concessions and arguments accepted and found by the PAT included:
 - PAT accepted the submissions of the Appellants that, the CPA acted in principles *intra vires* the legislative framework and law to grant a variance at the scope it did.
 - The PAT further accepted and found that, the scope of the variance was a matter left for planning judgment and discretion, and the Regulations and law did not intend a fetter on the scope or extent beyond the 50% off-site parking that was permitted in variance.

- The PAT also correctly found that, the CPA did not act *ultra vires* the law in granting a variance, as the law so permits under the *Regulations*. Further that, such a variance is permitted under the law/legislative framework, especially the *Regulations*, at regulation 8(13)(b), once the CPA finds a “*sufficient reason and exceptional circumstances*”. What amounts to that was non-exhaustive and was largely left within the wide planning judgment and discretion, on the evidence.
 - At paragraphs 37 and 38, the PAT also found that three of seven reasons provided by the CPA in support of its decision to grant the variance were relevant considerations in determining “*sufficient reason and exceptional circumstances*”. Whilst correctly so reasoned and found, the PAT erred in law in treating those three found factors as merely relevant consideration. Whilst the Appellants agree they are clearly relevant consideration (and not only those but in fact several of the other factors the PAT incorrectly found irrelevant), the PAT acted erroneously in failing to appreciate that, those were not mere relevant considerations but actual factors, each and/or collectively capable of and so found by the planning authority/CPA, as amounting to “*sufficient reason and exceptional circumstances*”, to satisfy the CPA’s granting of a variance in compliance with regulations 8(13)(b) of the *Regulations*.
- (v) The Impugned PAT Decision was erroneous in law, as following from the above-outlined findings applicable principles of law and concessions of the PAT, even if the PAT had doubted whether any of the other two or six factors constituted “*sufficient reason and exceptional circumstances*” singly or collectively, to permit the variance, the PAT had no discretion or power under the law but to have found that, the CPA, (having found the “*no detriment to neighbours*” factor which was expressly prescribed or enumerated in the *Regulations* (i.e., regulation 8(13)(b)(iii)) to have been so satisfied, (which planning judgment and discretionary finding supported by evidence was unchallenged on the appeal before the PAT)), had acted *intra vires* the *Act* and *Regulations*, lawfully and exercised its discretion rationally and reasonably on the evidence. The PAT should have rationally ruled or concluded, given the logics of its findings up to parts of paragraph 38, that the CPA’s decision in exercise of its unchallenged planning judgment and discretion on the evidence, that “*the proposal will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighbourhood, or to the public welfare*” without more, did in fact constitute “*sufficient reason and an exceptional circumstance*” to grant a

variance, under regulation 8(13)(b)(iii) of the *Regulations*. The rational decision which flowed from those concessions and findings of the PAT should also have been that:

Although the CPA had found several other reasons, such as the tourism product and traffic impact considerations, (which the PAT agreed at paragraphs 37 and 38, that at least two of which were relevant such considerations (to have so satisfied)), those would only further justify the decision to grant the variance and to support the scope of the variance granted. The said “regulation 8(13)(b)(iii) no detriment” factor singly met the threshold to grant a variance. The CPA, in so doing, supported by several other collective reasons in support, acted lawfully and Wednesbury reasonably in its decision to grant the variance. There is no evidence that the CPA’s decision to grant the planning permission and variance in those circumstances was beyond what any other reasonable tribunal could have done. The scope of the variance granted was within the CPA’s sole discretion and as was properly found by the PAT at paragraphs 24 and 27, was unfettered under the legislative framework. Accordingly, the CPA Decision is upheld and the appeal dismissed, with costs to the Respondents in the appeal before the PAT (Appellants herein).

- (vi) The PAT erred in its statement of a material undisputed fact or evidence. Contrary to paragraph 66.2, there was no planning permission application decided on 13 November 2024. On that date, there was an adjournment of the application with a request made for further information and evidence (not the decision on a planning application), and the actual application which is the subject of the CPA Decision, was heard on 19 March 2025. The statement in the conclusion at paragraph 66.3 of the Impugned PAT Decision is misleading and amounts to an error in law, as the reliance on an adjournment was incorrectly used as and/or elevated by the PAT as a finding of the CPA that “no sufficient reason or exceptional circumstances existed” to grant a variance, when that was not the case. The PAT erred in law in so relying especially where this misconception had been expressly clarified and seemingly debunked at the hearing, when raised by the Chair of PAT. The only material application and decision of the CPA in respect of the Impugned CPA Decision was its approval of the planning permission communicated in its decisional letter dated 7 April 2025 and supported by CPA Minutes dated 19 March 2025, where the CPA had been satisfied that, *inter alia*, the requisite regulatory circumstances had been met, such as the circumstances prescribed under regulation 8(13)(b)(iii) of the *Regulations*.
- (vii) The Impugned PAT Decision erred in law in seemingly conflating the application of *Wednesbury* unreasonableness principles in circumstances where there was no challenge to an exercise of discretion or planning judgment, in which instances those principles would be unnecessary, irrelevant an/or inapplicable. The CPA having found

that at least one of the factors or circumstances prescribed or identified under the *Regulations*, that is regulation 8(13)(b)(iii) had been satisfied in their planning judgment, where such planning judgment was unchallenged on the appeal before the PAT, it was not open to or relevant for the PAT to engage in reasonableness arguments as, having found that one of the factors was met, the CPA under that *Regulations*, had lawful authority to then grant the variance. The only issue where discretion became relevant would have been the scope of the variance. That issue was properly resolved or determined in the CPA's favour by the PAT under paragraphs 24 and 27, to the effect that, the scope of the variance was unfettered under the law/legislative scheme, which meant that, once the CPA had found on the evidence and in its planning judgment the existence of a "*sufficient reason and exceptional circumstances*", it could lawfully and properly grant the planning permission variance to whatever percentage beyond the 50% mark, as at deemed fit (the scope unfettered).

- (viii) The Impugned PAT Decision in its findings and reasoning at paragraph 37.7 that the "*no detriment to neighbour*" factor does not constitute "*sufficient reason and exceptional circumstances*" and was merely a relevant consideration, amounts to a grave misconstruction, misapplication or misunderstanding of the legislative framework, in particular regulation 8(13)(b)(iii) of the *Regulations*. For the PAT to reason that, although the CPA in its unchallenged planning judgment on the evidence, determined that the factor/circumstance prescribed under regulation 8(13)(b)(iii) was made out on the evidence, among other factors, yet ruled that, that could not be a justifiable reason for the CPA to have granted a variance, is erroneous in law. The fact is, once that factor was found by the CPA and the planning judgment and discretion to so find was unchallenged on the appeal before the PAT, the only rational and lawful decision that was open to the PAT was that the CPA acted *intra vires* the law, lawfully and reasonably in granting a variance; with the scope of the variance having already and properly been found by the PAT at paragraphs 24 and 27 to be lawful and unfettered by the legislative framework including the *Regulations*.
- (ix) The PAT erred in law in what it considered or found at paragraphs 37 and 38, to be irrelevant considerations and further, especially to the extent that they were deemed to have materially resulted in the CPA decision being unlawful and unreasonable, to be quashed. The converse is true. All the reasons outlined by the CPA were relevant considerations to ground its planning decision and approval, which included a variance. The four reasons that were deemed at paragraph 38 to be irrelevant considerations were in law and on the evidence clearly relevant considerations, given, *inter alia*, the subject matter and in the planning context. The Impugned PAT Decision conflated and misconstrued the purpose for which the CPA provided seven (7) reasons for its decision to grant the planning permissions to the First Appellant, which included a variance. The

CPA did not indicate that each of the seven reasons singly or necessarily constituted a “*sufficient reason and exceptional circumstances*”. That was not required in law. The CPA erred in law in seemingly misconstruing the regulatory requirement under regulation 8(13)(b) of the *Regulations*, to require more such reasons to permit the CPA to grant a variance beyond the 50% off-site parking. The contrary is true. Under that regulation, three circumstances were prescribed under regulation 8(13)(b)(i)-(iii), as each being clear examples of “*sufficient reason and exceptional circumstances*”. Although that regulatory list is non-exhaustive, which permits the CPA to deem other factors as so constituting, and in exercise of its planning judgment and discretion (which planning judgment was unchallenged in the appeal before the PAT), having found, among other factors, one such regulatory circumstances/factors to have been satisfied, that is, the factor or circumstances stipulated under regulation 8(13)(b)(iii), the CPA was justified and acted lawfully and in compliance with the *Regulations* in granting the planning approval with the variance.

- (x) In violation of the rules of natural justice, the Impugned PAT Decision engaged in considerations of and determination of adequacy of reasons for the CPA Decision, where no such ground of appeal was pleaded or argued by the Appellant in the PAT proceedings. This amounts to an error in law on the evidence, where the administrative CPA Decision, (not classified as a judicial or a tribunal decision), was clearly intelligibly enough, adequate and detailed for the purpose and did not in any way prejudice, let alone materially so, the Objector (Respondent herein) to have resulted in any injustice to the Objector or error in law on the part of the CPA in the CPA Decision.
- (xi) The Impugned PAT Decision in violation of the rules of natural justice, unjustly and erroneously misconstrued and/or conflated the extensive submissions (both oral and written) made on behalf of the Appellants in many material respects, to arrive at erroneous conclusions and findings. These included:
 - (a) The PAT seemed to have reasoned that, on the *Compton Parish Council v Guildford Borough Council* [2019] EWHC 3242 (Admin) decision, several exceptional circumstances needed to be satisfied to justify a variance, where the relevant Cayman Islands legislative framework does not so require. The Appellants had submitted that, aside from the fact that the CPA had already found one of the reasons the *Regulations* had expressly stipulated, to constitute “*sufficient reason and exceptional circumstances*” which without more could have and did justify their decision to grant the variance, the English case law, (albeit only of limited guidance in this respect, especially since “*sufficient reason and exceptional circumstances*” were not defined separately in the *Act* or *Regulations*, unlike in perhaps English statutes), guided that the concept of

exceptional circumstances is broadly construed and is largely to be determined in the planning judgment, where undefined under the statutory regime. In fact, in the Cayman Islands the combined concepts were not defined, but instead, the Cabinet provided **any one of three** examples/factors/circumstances by way of regulation 8(13)(b) (i), (ii) **or** (iii) of the *Regulations*, of what would definitely amount to “*sufficient reason and exceptional circumstances*” to permit the granting of a variance by the CPA. Those 3 examples did not, nor were they intended to form a class or *genus* of such permissible factors. Much was therefore left within the planning judgment and discretion of the CPA to determine what they may deem to constitute “*sufficient reason and exceptional circumstances*” for the purpose of granting a variance beyond the 50% off-site parking.

- (b) PAT had a misconception that, each of the reasons proffered by the CPA in the CPA Decision needed to singly amount to what may be construed as “exceptional circumstances” to be deemed “relevant” to guide in the decision whether to grant a variance. This was an error as the CPA merely provided several reasons for its decision. The CPA neither stated nor implied in their reasons that each was taken to be or meant to constitute “*sufficient reason and/or exceptional circumstances*”. The point made on behalf of the Appellants was that, the case law to the extent restrictively instructive, and especially where none of the three factors in the regulations was found, guide that, even in hypothetical instances where it is found that no single or one factor/circumstance could amount to “*sufficient reason and exceptional circumstances*”, the Planning Authority could still find that such threshold was met by several such cumulative or collective factors. To that end, it was argued that, the list of factors under regulation 8(13)(b) was non-exhaustive, which provided the CPA with discretion to find other factors which in their sole planning discretion could meet the threshold or amount to “*sufficient reason and exceptional circumstances*” to grant a variance. That, the CPA did when it provided seven collective reasons for its decision to grant the variance. Of those seven, the PAT had decided at paragraphs 37 and 38, that three were relevant considerations to grant the variance, (which included one that was specifically prescribed in the *Regulations* and two other that were not specifically stipulated under regulation 8(13)(b)), but were within the CPA’s planning discretion and judgment to so find under the law, and were in fact so determined /found by the CPA.
- (c) The PAT, at paragraphs 37 and 38, having identified three of the CPA’s reasons, conflated the issue of the three found “*sufficient reason and exceptional*

circumstances” by treating those factors to be merely relevant considerations, (and four others to be irrelevant). The error is that, it is for the CPA, in exercise of its planning judgment and discretion to identify what it deems as “*sufficient reason and exceptional circumstances*”; it is partly a legal and evidential/discretionary decision. Having so done, the PAT’s role was to examine them to see if, in law, any more than one of them, or all of those, singly or collectively, on the evidence, could have also constituted “*sufficient reason and exceptional circumstances*” as the CPA so found, when it granted the variance. Having reasoned that the concepts are broad, vague and left largely within the CPA’s broad discretion, and given the law, and in the face of the clearly identified regulation 8(13)(b)(iii) ‘*no detriment*’ factor, the decision that no exceptional circumstances was found to grant the variance, was erroneous in law.

- (d) The ruling at paragraph 57 of the Impugned PAT Decision that the CPA needed to explain its departure from its previous position and explain what changed, was unreasonable and an error in law. The evidence did not support such a finding or ruling, as, *inter alia*, there were only three (3) related decisions and all three were explored at the hearing. The ruling failed to explore the applicable principles of law that were discussed and submitted on this issue, supported by numerous case law. The principles being that, the 2025 planning application which formed the subject of the CPA Decision was in law and on the facts/evidence, treated and considered a fresh and new planning application, with a new planning identification reference number. That, the Planning Authority (such as the CPA), is not bound by past decisions and that, reference to and consideration of or regard to, a previous decision may only become relevant only where the facts are materially and substantively the same. In the appeal, material differences were identified in the previous related decisions. In examining the three related planning applications. The **First Planning Decision (November 2020)** - planning permission was denied as no exceptional circumstances was found. As was submitted and evidenced at the hearing, that first planning application was found to be materially different in facts in material respects, irrelevant and never needed to be mentioned by the CPA in the CPA Decision. The **Second Planning Decision (25 July 2023)**, like the impugned CPA Decision, was actually approved, where sufficient reasons and exceptional circumstances were found and the variance granted. This Second Planning application, like the instant Third Application, was approved and the variance granted. The **Third Planning Application** is the instant (**March/April 2025 CPA Decision**), where planning approval like the previous related and materially similar planning application was approved, granted and

the variance given, with detailed reasons explaining that exceptional circumstances was found to grant the variance. The CPA in the 2025 CPA Decision therefore never needed to explain any change in its position where no such planning decisional change existed.

- (e) Again, the PAT conflated issues and acted erroneously both in law and on the evidence, as in respect of the Second Planning Decision, on the evidence, there was a Consent Order entered between the CPA and Objector at the time, to remit the matter to the CPA, due to “*inadequacy of reasons*” as indicated in the Schedule to that Consent Order. The evidence before the PAT at the hearing was agreed and even conceded by the Counsel/KC for the now Respondent, that the Consent Order did not refer to nor state any reasons for the parties remitting the planning application to the CPA, beyond due to *adequacy of reasons*. That means, it did not agree that the CPA had not found *sufficient reason and exceptional circumstances* or that the appeal was conceded on its merits. Instead, as was pointed out orally at the hearing to the PAT and accepted by PAT and the Parties (with notation made for the incorrect factual and legal references made by King’s Counsel acting for the then Appellant, be deleted from his written submissions and noted on the records), which seemingly was also misconceived or conflated by the Impugned PAT Decision, an examination of the decision letter of the CPA communicating the CPA’s decision on the Second Application, reveals that it lacked reasons in that, the full reasons as disclosed on the relevant/recorded Minutes of that Decision appeared to have been omitted (perhaps administratively). In fact, that letter never even mentioned the *Regulations* or the regulations 8(13)(b) requirements in respect of variance, nor even the concept of *sufficient reason and exceptional circumstances*, although the Minutes revealed that the CPA did in fact make those considerations and found, among other factors, that the regulation 8(13)(b)(iii) factor had been satisfied to grant the variance and planning permission. The Second Planning Decision was not determined by the PAT, the Parties had entered into a Consent Order to treat with it, due to *inadequacy of reasons*. Thus, it was erroneous in law for the Impugned PAT Decision to find or reason that, the CPA in the impugned CPA Decision needed to justify its departure, when there was in fact and on the evidence, no such departure, for any previous relevant similar planning application decision.
- (f) The reference to a previous adjournment for further information/evidence on 13 November 2024, in respect of the **Third Planning Decision and application (the subject of the CPA Decision)**, was in law and on the evidence, not a planning application decision, and any finding to the contrary

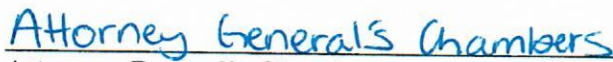
by the PAT was also erroneous in law and on the evidence. Counsel for the Appellants had clearly orally made and highlighted that submission at the hearing before the PAT.

Dated the 20th day of November 2025



Waide DaCosta

Attorney-at-Law for the First Appellant



Attorney General's Chambers

Attorneys-at-Law for the Second Appellant

TO: The Clerk of the Grand Court

AND TO: Mr. Robert Jones
Baker & Partners
Attorneys-at-Law for the Respondent

AND TO: The Secretariat and Chairperson
Planning Appeals Tribunal
The Interested Party