Neutral Citation Number: [2023] EWCA Civ 917

Case No: CA-2022-002041

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
Mr Justice Morris
[2022] EWHC 2262 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 July 2023

Before :

LORD JUSTICE BEAN
SIR KEITH LINDBLOM
(Senior President of Tribunals)
and
LORD JUSTICE COULSON

- -

Between :

THE KING (on the application of THE SPITALFIELDS HISTORIC BUILDING TRUST)	**Claimant/Appellant**
- and -	
LONDON BOROUGH OF TOWER HAMLETS	**Defendant/ First Respondent**
- and -	
OLD TRUMAN BREWERY LTD.	**Interested Party/ Second Respondent**

- -
- -

Richard Harwood KC (instructed by **Harrison Grant Ring**) for the **Appellant**
Hereward Phillpot KC and **Isabella Tafur** (instructed by **Legal Services, London Borough of Tower Hamlets**) for the **First Respondent**
Timothy Corner KC and **Yaaser Vanderman** (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the **Second Respondent**

Hearing date: 21 June 2023

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Approved Judgment

This judgment was handed down remotely at 4:40 pm on 28 July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Sir Keith Lindblom, Senior President of Tribunals:

Introduction

1. The basic question in the case is whether a provision in a local authority's constitution, whose effect was to restrict voting by members on deferred applications for planning permission to those who had been present at the meeting or meetings at which the application had previously been considered, was lawful. The judge in the court below held that it was.

2. The appellant, the Spitalfields Historic Building Trust ("the trust"), appeals against the order of Morris J. dated 31 August 2022 dismissing its claim for judicial review of the decision of the first respondent, the London Borough of Tower Hamlets Council ("the council"), to grant planning permission for a development of mixed uses, including offices, retail outlets, a gym and a restaurant, on land at the junction of Woodseer Street and Brick Lane in Spitalfields. The site was formerly in use as a brewery. The applicant for planning permission was the second respondent, Old Truman Brewery Ltd. ("the brewery company").

3. The brewery company made its application for planning permission in May 2020. The proposal excited a good deal of local opposition. There were more than 7,000 objections. The application first came before the council's Development Committee on 27 April 2021, and its determination was then deferred. It came back before the committee, which was by then differently composed, on 14 September 2021, and the committee resolved on that occasion to grant planning permission. After the completion of a section 106 agreement, the planning permission was granted on 10 November 2021.

4. In the trust's claim for judicial review there were three grounds of challenge: first, that the members of the Development Committee were told unlawfully that they may not vote on the application at the second of the two committee meetings if they had not been present at the first meeting; second, that the committee's procedure was procedurally unfair, because public speaking was not permitted at the second meeting; and third, that the council failed to have regard to relevant policies of the draft Spitalfields Neighbourhood Plan. The judge rejected all three grounds. The trust sought permission to appeal on the first, which the judge refused, but Warby L.J. later granted.

The main issue in the appeal

5. There is a single ground of appeal in the appellant's notice, which states that "[the] learned judge was wrong to find that the Council was empowered to make standing orders under the Local Government Act 1972, Schedule 12, [paragraphs] 42 and 44 removing the right of committee members to vote (High Court ground 1)". Whether that contention is correct is the main issue for us to decide in this appeal.

6. In a respondent's notice the brewery company put forward two additional and alternative grounds for upholding the judge's order. The first is that "[in] providing that only Members who were present at the previous meeting could vote on the recommenced consideration of a deferred application, the Council made provision in the Constitution for the composition of the Development Committee when a deferred application is being considered[; and that, in] substance, it has provided that the

Committee is to comprise only those members who were present when the deferred application was previously considered". The second is that "[alternatively], the effect of the legislative regime is that when consideration of a deferred application recommences, the Development Committee (which is given the power to establish sub-committees by Part B of [the council's] Constitution at section 19 and section 101 of the Local Government Act 1972) delegates the power to determine the application to a sub-committee, comprising only those Members who were present when the application was first considered".

The committee's consideration of the application for planning permission

7. A full account of the relevant facts, including the Development Committee's consideration of the brewery company's application for planning permission, was provided by the judge (in paragraphs 3 to 55 of his judgment). I gratefully adopt his narrative, and need mention only the salient events.

8. The meeting of the Development Committee on 27 April 2021 was held remotely under the arrangements in force during the COVID-19 pandemic. It was webcast and recorded. In their reports to the committee – a first report and an updating report – the council's officers recommended that planning permission be granted. Five members were present: the Chair – Councillor Abdul Mukit, and Councillors Sufia Alam, Kahar Chowdhury, Leema Qureshi and Kevin Brady, who was the substitute for Councillor John Pierce. Councillor Dipa Das gave her apologies for not attending. The two other substitutes, Councillors Akhtar and Pappu, were not present. As the minutes record, the committee voted unanimously to defer consideration of the proposal, "[to] enable Officers to explore further the Head of Terms for the s106 agreement in relation to the terms & provision of independent retail space with a focus on supporting existing local businesses and the community cohesion aspects of these matters". The minutes also state that "[in] accordance with Development Procedural Rules, the application was DEFERRED to enable Officers to prepare a supplementary report to a future meeting of the Committee". Negotiations on the section 106 agreement followed.

9. At the Annual Council Meeting in May 2021 the membership of the committee changed. Councillors Alam and Das left the committee. Councillors Perry and Islam joined it. Thus the members of the committee were now Councillors Mukit, Chowdhury, Qureshi, Pierce, Perry and Islam. The substitute members were Councillors Brady, Akhtar and Edgar. Membership of the committee changed again before the meeting on 14 September 2021. By then the members of the committee were Councillors Mukit, as Chair, and Councillors Chowdhury, Perry, Qureshi and Brady – of whom Councillors Mukit, Chowdhury, Qureshi and Brady had been present at the April meeting. The substitute members were now Councillors Akhtar and Edgar – neither of whom had been present at the April meeting.

10. The meeting of the committee on 14 September 2021 took place in person. Notice of the meeting was given in the normal way. The members of the committee who attended on this occasion were Councillor Mukit, as Chair, and Councillors Chowdhury and Brady. Councillor Qureshi observed the meeting remotely, and was therefore, in law, neither present at the meeting nor entitled to vote. Councillor Perry gave her apologies for not attending.

11. The brewery company's application was the only substantive item on the agenda. The members had before them the officers' two reports for the April meeting, a further report, and an updating report submitted on the day of the meeting. The officers maintained their recommendation to approve. Before discussion of the proposal began, Councillor Mukit said this:

> "… Only the councillors present on the 27th April committee meeting and are here in the Council Chamber may vote on this item. They are myself, [Councillors] Kevin Brady and Kahar Chowdhury. [Councillor] Leema Qureshi is also present but as she is attending online she cannot vote today on this item."

12. The committee resolved to grant planning permission by a majority of two to one. Councillor Mukit voted against. As Chair, he would have had a second or casting vote if the votes had been equal.

The legislative framework

13. Under section 101(1) of the Local Government Act 1972 ("the 1972 Act"), a local authority may arrange for the discharge of any of its functions by a committee, sub-committee or officer of the authority. So far as is relevant here, section 102(1) provides that "[for] the purpose of discharging any functions in pursuance of arrangements made under section 101 above … (a) local authority may appoint a committee of the authority, or … (c) such committee may appoint one or more sub-committees". Section 102(2) provides that "[the] number of members of a committee appointed under subsection (1) …, their term of office and the area (if restricted) within which the committee are to exercise their authority shall be fixed by the appointing authority … or, in the case of a sub-committee, by the appointing committee".

14. Section 106 provides:

> "Standing orders may be made as respects any committee of a local authority by that authority … with respect to the quorum, proceedings and place of meeting of the committee … (including any sub-committee) but, subject to any such standing orders, the quorum, proceedings and place of meeting shall be such as the committee … or sub-committee may determine."

15. Schedule 12 to the 1972 Act contains provisions for meetings of committees and sub-committees. Paragraph 39 of that schedule states:

> "(1) Subject to the provisions of any enactments (including any enactment in this Act) all questions coming or arising before a local authority shall be decided by a majority of the members of the authority present and voting thereon at a meeting of the authority.
>
> (2) Subject to those provisions in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote."

16. Paragraph 42 states:

> "Subject to the provisions of this Act, a local authority may make standing orders for the regulation of their proceedings and business and may vary or revoke any such orders."

17. Under paragraph 44(1) of Schedule 12, paragraphs 39 and 42 apply to a committee of the authority.

18. Section 15 of the Local Government and Housing Act 1989 ("the 1989 Act"), with Schedule 1, provides for the allocation of "seats" to political groups. Section 15(1) imposes a duty on a local authority to review the representation of different political groups. Under section 15(4), in determining the allocation of seats on committees or sub-committees, local authorities and their committees must "so far as reasonably practicable" make such determinations having regard to the principles in section 15(5). The essential aim of those principles is to ensure that the composition of the committee or sub-committee reflects the political make-up of the authority. Under paragraph 1(a) of Schedule 1, as "any ordinary committee or ordinary sub-committee of the authority", a planning committee and its sub-committees are among those that must be politically balanced. Under section 15(5)(c) and paragraph 4(1) of Schedule 1, each place on a committee appointed under section 102 of the 1972 Act is a "seat". Paragraph 4(1) of Schedule 1 provides that "'seat', in relation to a body to which section 15 of this Act applies, means such a position as a member of that body a) entitles the person holding the position to vote at meetings of the body on any question which falls to be decided at such a meeting …".

19. Section 9P of the Local Government Act 2000 ("the 2000 Act") provides, so far as is relevant here, that a local authority must prepare a "constitution", which must contain, among other things, "a copy of the authority's standing orders for the time being" (section 9P(1)(a)).

20. Section 9Q(1) provides that "[a] local authority must have regard to any guidance for the time being issued by the Secretary of State for the purposes of this Part". Relevant guidance issued by the Secretary of State, in the Local Government Act 2000 (Constitutions) (England) Direction 2000 ("the Constitutions Direction"), states that a constitution should contain information on committee and sub-committee membership, terms of reference and functions, and any rules governing the conduct and proceedings of their meetings, whether specified in the authority's standing orders or otherwise.

21. Section 31(4) of the Localism Act 2011 provides that members are prohibited from taking part in the consideration or discussion of an item or voting if they are aware of a pecuniary interest. Under section 31(10) standing orders can provide for the exclusion of the member from the meeting while that matter is discussed. Section 94 of the 1972 Act, now repealed, was of similar effect. Under section 106 of the Local Government Finance Act 1992 ("the 1992 Act"), a similar prohibition applies to members who have a payment of council tax outstanding. There are also several statutory provisions whose effect is that members of council committees who are not members of that council are not entitled to vote unless authorised by statute to do so (for example, section 13 of the 1989 Act, and section 21(10) of, and paragraphs 7, 11 and 12 of Schedule A1 to, the 2000 Act).

The council's constitution

22. The council's constitution, in the form it took at the time of the council's decision on the brewery company's application for planning permission in September 2021, is dated 24 June 2021. The council had resolved to adopt it at its annual meeting on 19 May 2021, and some amendments were made after that and before formal adoption.

23. The constitution is in four parts. Paragraph 1 of Part A, "Summary and Explanation", explains that the constitution describes the way in which the council operates, how decisions are made and the procedures followed to ensure that those decisions are "efficient, transparent and accountable to local people". Paragraph 3 confirms that the purpose of the constitution is to ensure, among other things, that decisions are taken "efficiently, effectively and transparently".

24. Part B, "Responsibility for Functions and Decision Making Procedures", sets out the terms of reference for the council and its several committees. It provides for the formation of committees, including the Development Committee, and several sub-committees. It states that "[in] the absence of any express statutory prohibition to the contrary, all Council bodies listed from 4 onwards [which include the Development Committee] may establish Sub-Committees pursuant to section 101 of [the 1972 Act]". The terms of reference for the Development Committee are in section 19, sub-section 7. The functions of that committee include the consideration and determination of recommendations from the Corporate Director, Place for the grant or refusal of certain applications for planning permission.

25. Part C contains "Codes and Protocols". These include, in section 35, the "Planning Code of Conduct", which provides guidance on the performance of planning functions. Paragraph 1.3 of section 35 says that "[the] provisions of this Code are designed to ensure that planning decisions are taken with sound judgement and for justifiable reasons, in a fair consistent and open manner and that Councillors making such decisions are perceived as being accountable for those decisions". Paragraphs 2.1 to 2.4 address predisposition and predetermination. This reflects the position at common law that councillors may hold a view on a matter before it comes to committee, "provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting". Paragraph 2.7 says that "Councillors must not make up their mind, or appear to have made up their mind on how they will vote on any planning matter prior to formal consideration of the matter at the meeting of the Committee and of the Councillor hearing the officer's presentation and evidence and arguments on both sides". In section 12, "Conduct at the Committee", paragraph 12.1 says that "[councillors] must not only act fairly but must be seen to act fairly"; paragraph 12.4, that "[the] Committee must ensure that they hear the evidence and arguments for and against the application and approach each planning issue with an open mind"; and paragraph 12.5, that "[if] a Councillor arrives late for a meeting they will not be able to participate in any item or application under discussion …", and "[if] a Councillor has to leave the meeting for any length of time they will not be able to participate in the deliberation or vote on the item or application under discussion at the time of their absence", and "[if] a Councillor needs to leave the room, they should ask the Chair for a short adjournment".

26. In sub-section 13 of the Planning Code of Conduct, which is headed "Decision making", paragraph 13.4 states:

> "Councillors must not take part in the meeting's discussion on a proposal unless they have been present to hear the entire debate, including the officers' introduction to the matter. If an application has previously been deferred then the same Councillors will be asked to reconsider the application when it is returned to Committee."

27. Part D of the constitution contains a number of "Supplementary Documents". These include the "Strategic Development Committee/Development Committee – Development Procedure Rules" ("the Rules"). Section 5 of the Rules is headed "ORDER OF PROCEEDINGS". Paragraph 5.4 states:

> "In order to [be] able to vote upon an item, a Councillor must be present throughout the whole of the Committee's consideration including the officer introduction to the matter."

28. Section 11 of the Rules is headed "DEFERRALS". Paragraph 11.4 states:

> "Where an application is deferred and its consideration recommences at a subsequent meeting only Members who were present at the previous meeting will be able to vote. If this renders the Committee inquorate then the item will have to be considered afresh. This would include public speaking rights being triggered again."

The judgment in the court below

29. On the issues that have now come before us, Morris J. considered the starting point to be that "every member of a local authority council or committee has a prima facie entitlement to vote at a relevant meeting". He referred to the first instance judgment of Scoffield J. in the High Court in Northern Ireland in *Hartlands (NI) Ltd*. [2021] NIQB 94, whose analysis, in his view, applied "with equal force" to the 1972 Act and was supported by the decision of the Court of Appeal in *R. v Flintshire County Council, ex parte Armstrong-Braun* [2001] EWCA Civ 345; [2001] L.G.R. 345. Although there was "no direct express statutory provision stating this entitlement", he thought it could be "inferred both from certain positive provisions (Sch 12, para. 39 LGA 1972: Sch 1 para. 4(b), LGHA 1989)" and from "the "negative" legislative provisions which expressly exclude the right to vote in certain specified circumstances (see s.13 LGHA 1989; s.106 LGFA 1972; s.21(10) and Sch A1, LGA 2000 and s.31 LA 2011)". This entitlement, he said, "arises from primary legislation". And he agreed with Scoffield J. that "any restriction of the entitlement to vote requires statutory authority" (paragraph 111 of the judgment).

30. The question to be decided, therefore, was "whether the restriction on voting in this case is sufficiently clearly authorised by statute and/or the Constitution", the trust having accepted that the restriction was "not *Wednesbury* unreasonable" (paragraph 112). Membership of councils and committees "will change over time". It followed that "where a first meeting defers consideration of an application to a later meeting (perhaps some months later), it is possible that, by the time of the second meeting, the committee members who attended the first meeting will no longer be members and there will be new committee members who did not attend the first meeting". Therefore, "[regardless]

of the Deferred Meeting voting rule, the same councillors will not necessarily be able to consider the application at the two meetings". And "[the] application of the … rule will necessarily exclude any new members; it may also lead to the second meeting being inquorate" (paragraph 113). Some of this had happened here (paragraph 114).

31. The judge rejected the contention that, by its constitution, the council had changed the composition of the Development Committee for deferred applications only, or had established a separate sub-committee under section 19 of Part B of the constitution and section 101 of the 1972 Act to deal only with such applications (paragraphs 115 to 119).

32. It was common ground that paragraph 11.4 of the Rules was a "standing order" within the meaning of paragraph 42 of Schedule 12 (paragraph 120). The question, therefore, was whether paragraph 11.4 was a standing order "for the regulation of [the] proceedings and business" of the Development Committee (paragraph 121). In *Hartlands*, it had been concluded that a similar rule depriving a person of a right to vote was not a matter of "procedure" under the relevant provision in the planning legislation. In Scoffield J.'s view "procedure" related to "the practical or administrative arrangements for and conduct of a hearing", including "attendance, venue, timing and speaking rights". But "[voting], in contrast, was a matter of substantive decision making" (paragraph 122). Morris J. therefore came to these conclusions on the meaning and effect of paragraph 42 of Schedule 12:

> "123. In my judgment, as a matter of construction, "regulation of [the] proceedings and business (of the committee) is wider than [arranging] "procedure" (as in *Hartlands*). "Business" is the substantive matters considered by the committee; and "proceedings" refers to the whole of the conduct of that business by the committee. Together, "regulation of the proceedings and business" addresses not just the practical or administrative arrangements for the conduct of a meeting or hearing, but "what" business the committee does as a whole and the manner in which it does it. Schedule 12 paragraph 42 can cover matters of substance, as well as matters of procedure: see *Armstrong-Braun* … and, further, Scoffield J's characterisation of the rule in that case … . The reference in paragraph 3n of the Constitutions [Direction] to "rules governing *conduct* and *proceedings* of meetings" suggests that "proceedings" is wider than pure procedure, as interpreted by Scoffield J. [in *Hartlands*]."

33. He went on to say that paragraph 11.4 was in the rules that regulate, and are intended to regulate, the Development Committee's proceedings – for example, paragraphs 1.1 and 1.2 (paragraph 124 of the judgment), and also, as a whole, section 5, "Order of Proceedings", in particular paragraph 5.4. The restriction on voting in the second part of paragraph 5.4 was "a rule regulating the proceedings of the meeting in question …", and was "covered by paragraph 42 of Schedule 12". And there had been no suggestion in *Hartlands* that a similar provision in Northern Ireland was ultra vires. In Morris J.'s view, the exclusion of the right to vote at a deferred meeting in paragraph 11.4 "serves the same purpose and is no different in kind". It "equally regulates the proceedings at such a meeting" (paragraph 125). He added that the provision on quoracy in the second sentence of paragraph 11.4 was "part of the regulation of the proceedings and business of the Development Committee; and supports the conclusion that paragraph 11.4 in its entirety regulates the proceedings and business" (paragraph 126). Scoffield J.'s decision in *Hartlands* had been "finely balanced". He had recognised that in other

circumstances a standing order might permit disqualification from voting. Morris J. was of the view that "the wider and different wording" in paragraph 42 of Schedule 12 to the 1972 Act "tips the balance the other way, in favour of the lawfulness of the Deferred Meeting voting rule" (paragraph 127).

34. He therefore concluded on this issue (in paragraphs 128 and 129):

> "128. In effect, where consideration of a planning application is deferred, the two meetings form part of a single decision-making process. The local authority is entitled, by provision in its Constitution, to say that, as far as possible, members should be present for all of that process in order to vote. In such case, that provision falls within the power in paragraph 42 of Schedule 12, as constituting the regulation of "proceedings and business" of the committee.
>
> 129. For these reasons, I conclude that the Deferred Meeting voting rule and, in particular, paragraph 11.4 of the Rules "regulates the proceedings and business of the Committee" and thus falls within [the council's] powers in paragraph 42 of Schedule 12 to the LGA 1972. It is therefore not unlawful and Ground 1 fails."

Was the grant of planning permission invalidated by paragraph 11.4 of the Rules?

35. As both sides acknowledge, paragraph 11.4 of the Rules is a standing order, whose purpose and effect is to restrict, in specific terms, councillors' entitlement to vote on deferred applications for planning permission.

36. It is common ground between the parties, and I agree, that it was not irrational for the council to restrict voting on deferred applications to the members present at the first meeting at which such an application has been considered. The central dispute in the case is whether, despite this being a rational provision to put in place as a standing order, to do so was nevertheless ultra vires because it lay outside the council's power under paragraph 42 of Schedule 12 to the 1972 Act to use standing orders to regulate its own "proceedings and business".

37. For the trust, Mr Richard Harwood K.C. submitted that the three members who were present at the meeting of the committee on 14 September 2021 but had not been present at the meeting of the committee on 27 April 2021 – Councillors Perry, Akhtar and Edgar – were unlawfully prevented from voting at the September meeting. He argued that the "right" of an elected councillor to vote on matters before a committee of which he is a member is "sacrosanct" and can only be overridden by clear statutory words. Paragraph 42 of Schedule 12 does not have that effect. The rule in paragraph 11.4 that members may not vote on a matter if they have not been present at the previous meeting or meetings at which it has been discussed, though not irrational, is nonetheless unlawful. The council lacked the statutory power to make such a rule. The concept of "business and proceedings" in paragraph 42 of Schedule 12 does not embrace voting. No restrictions on voting made by standing order, including the rule in paragraph 5.4 that members may not vote if they were absent for any part of the committee's consideration of a matter, could be legally valid.

38. The "right to vote", Mr Harwood submitted, arises in the local government legislation – including, implicitly, in the provisions for local government decision-making in the 1972 Act, and explicitly in section 15 of the 1989 Act, which concerns proportional representation on councils, and paragraph 4 of Schedule 1 to that Act, which defines a "seat" on a committee. It has also been recognised in numerous decisions of the courts – for example, in the judgment of Pickford J. in *R. v Jackson* [1913] 3 K.B. 436 (at p.441).

39. The argument on behalf of the council, presented by Mr Hereward Phillpot K.C., was diametrically different. It was, in effect, that Morris J. was right for the reasons he gave. The 1972 Act does not constrain the regulation by local authorities of their "proceedings and business" under standing orders, and does not preclude restrictions on voting. Parliament has specified some particular restrictions on voting applicable to all local authorities, which they must adopt, but has deliberately left the possibility of other restrictions being adopted, and their scope, to the discretion of individual authorities. Paragraph 42 of Schedule 12 gives authorities the general power to make standing orders to regulate their "proceedings and business". That concept, in its statutory context, plainly embraces voting. Part V of the 1972 Act, "General Provisions as to Members and Proceedings of Local Authorities", comprises provisions relating to, and restricting, the entitlement to vote. Support for this interpretation of the expression "proceedings and business" may also be seen in Erskine May, which shows that in the parliamentary context "proceedings" has long been considered to include voting (Erskine May (2021 update), paragraph 13.12 under the heading "Proceedings in Parliament").

40. Mr Phillpot submitted that there are obvious practical advantages in local authorities having the power to regulate their members' entitlement to vote in this way. The purpose of the rules in paragraphs 5.4 and 11.4 is to provide an effective means of avoiding public law error, such as predetermination, in committee decision-making (see the judgment of Collins J. in *R. (on the application of Island Farm Development Ltd.) v Bridgend County Borough Council* [2006] EWHC 2189 (Admin), at paragraphs 31 and 32, and the judgment of Ouseley J. in *Bovis Homes Ltd. v New Forest District Council* [2002] EWHC 483 (Admin), at paragraphs 111 to 113).

41. Mr Phillpot observed that, as the 1989 Act requires, the council's Development Committee is politically balanced. There is no compulsion for members of a committee to attend every meeting of it. The "proportionality" of a committee is not unlawfully compromised by the exclusion from voting of a member or members who have failed to attend, or to attend on time – under paragraph 5.4 of the Rules. In principle, there is no difference between those circumstances and the situation in which members are prevented from voting when they have not attended every part of a decision-making process extending over more than a single committee meeting. Any effect on the "proportionality" of the committee was, as Mr Phillpot put it, merely "a lawful incident of members' attendance or non-attendance" at a committee meeting.

42. For the brewery company, Mr Timothy Corner K.C. adopted Mr Phillpot's submissions. He also developed the arguments foreshadowed in the respondent's notice.

43. Mr Harwood's argument was presented with great skill, but I cannot accept it. In my view the submissions made by Mr Phillpot and Mr Corner provide a cogent and correct

answer to it. In short, I think Morris J.'s conclusions on this issue were right, and the reasoning underpinning them sound.

44. As the judge held, for the council to make this provision in its constitution was within its powers under the legislative regime applying to local authority decision-making, and was lawful. And although we do not have to decide this point, the same may be said, I think, of the provision in paragraph 5.4 of the Rules preventing members from voting if they have not been present for the whole discussion of an application. Both of these provisions seem to me to fall squarely within the proper scope of the statutory power, conferred on local authorities in paragraph 42 of Schedule 12 to the 1972 Act, to make standing orders "for the regulation of their proceedings and business", including the "proceedings and business" of the Development Committee.

45. Whether that view is correct is the crucial question for us in this appeal. We must establish the true meaning and effect of the statutory concept itself – "for the regulation of their proceedings and business". What do those words mean, and what is their practical effect? Do they encompass the making of standing orders regulating the exercise by councillors of their entitlement to vote, and specifically their entitlement to vote on an application for planning permission that has previously been considered at a committee meeting they have not attended?

46. We do not need to consider whether, in circumstances where a decision is deferred to a subsequent committee meeting, it would be reasonable for the authority to allow members to vote on the second occasion even if they had not been present on the first. We only need to consider whether it would be within the authority's powers under the 1972 Act, as well as rational, for it to make standing orders to restrict such voting, so that only members present on the first occasion may vote on the second.

47. As I have said, it is not in my view irrational to arrange in this way for continuity in the decision-making by committees on applications whose determination, for whatever reason, cannot be concluded on a single occasion. On the contrary, it is, I think, perfectly logical and sensible. A typical situation in which this would be an appropriate way to proceed, as here, would be a case where the proposal is approved in principle on the first occasion but negotiation of the terms of a section 106 planning obligation remains, and the committee decides that the matter should return to it for final determination rather than simply being delegated to an officer for the planning permission to be issued when the obligation has been negotiated and executed.

48. Circumstances that gave rise to the need for deferral occurred in *R. (on the application of Blacker) v Chelmsford City Council* [2021] EWHC 3285 (Admin). In that case the committee's consideration of the application for planning permission took place at two meetings. The decision at the end of the first meeting was to defer further consideration of the proposal, the committee having taken a preliminary view in favour of approval. As Thornton J. put it (in paragraph 49 of her judgment), "[the] decision making was inchoate", and "[the] first decision amounted to no more than a procedural decision to defer further consideration, albeit based on a preliminary view in favour of the application".

49. Paragraph 42 of Schedule 12 is to be construed in accordance with orthodox principles of statutory interpretation (see the judgment of Lord Hodge in *Project Blue Ltd. v Commissioners of Her Majesty's Revenue and Customs* [2018] UKSC 30, [2018] 1

W.L.R. 3169, at paragraph 110; and also his judgment in *R. (on the application of Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2022] UKSC 3, [2023] 2 A.C. 255, at paragraphs 28 to 30).

50. The provision is manifestly broad in scope. The statutory language is simple, and in wide terms. The sense of the word "regulation", in my view, is the ordinary sense of an authority or other body controlling something by means of rules. The concept is not only the regulation of "proceedings" or of "business", but is deliberately extended to both. "Proceedings and business" is an expansive description of the decision-making and other functions of local authorities. I agree with Morris J.'s observation (in paragraph 123 of his judgment) that the concept of "business" here represents the substance of the matters that a committee has to consider, and "proceedings" extends to the entire "conduct of that business" by the committee. It follows that the concept of regulating the "proceedings and business" of the Development Committee is not confined merely to the making of rules to govern its procedure but extends to the substantive work of that committee and how it goes about that work. So the judge's conclusions on this question are, I think, well founded: that paragraph 42 of Schedule 12 extends to substantive as well as to procedural matters; that the "Rules" to which paragraph 11.4 belong are, in various ways, directed to the regulation of the committee's "proceedings and business"; and that paragraph 11.4 has this role, as does paragraph 5.4 (paragraphs 123 to 126 of the judgment).

51. I do not accept that those conclusions are negated by the provision in paragraph 39(1) of Schedule 12, stating that "[subject] to the provisions of any enactments (including any enactment in this Act) all questions coming or arising before a local authority shall be decided by a majority of the members of the authority present and voting thereon at a meeting of the authority". The reference there to members "present and voting" on questions before an authority does not limit or qualify the power in paragraph 42. It embodies the principle, subject to any other enactment, that decisions of an authority or any of its committees and sub-committees are to be made on the basis of majority voting, and the majority, as one would expect, is "a majority of the members of the authority present and voting", which means a majority of those members who are, in fact, present at the meeting and who also, in fact, vote. It does not prescribe who may vote.

52. Essentially the same conclusions apply to the provision in paragraph 5.4 of the Rules that councillors "must be present throughout the whole of the Committee's consideration including the officer introduction to the matter". As the judge accepted (in paragraph 125 of his judgment), such a rule, whose effect is to prevent members from voting if they have been absent during the committee's consideration of the relevant matter, is a provision regulating the proceedings at that meeting. Where the entitlement to vote is concerned, there is no real distinction of principle between the provisions in paragraph 5.4 and paragraph 11.4. Both provisions restrict the entitlement to vote, and essentially with the same purpose, which is to ensure a consistent and continuous participation by councillors in the decision-making process. Paragraph 5.4 serves to ensure that members will have taken into account the relevant considerations when they vote. Paragraph 11.4 serves to ensure that if they are to vote on the second occasion they will have in mind the consideration of the matter on the first. The fact that it might be possible for members who either have not been present throughout the consideration of a matter at a particular meeting or were not present at a previous

meeting to inform themselves of the discussions that have taken place in their absence does not remove the justification for either of these rules. It shows the essential similarity between them. Both act as safeguards against inconsistency and discontinuity in the conduct of the committee. They share the common characteristic of regulating its "proceedings and business" to achieve robust decision-making in the public interest.

53. Whilst Morris J. accepted (in paragraph 111 of his judgment) that the statutory regime for local government decision-making assumes a general entitlement to vote, which is not a controversial concept in itself, he did not go the further step of suggesting that this general entitlement was incapable of being modified by standing orders made under paragraph 42 of Schedule 12. And it has not been demonstrated by reference to any of the relevant case law that arrangements for the exercise by members of a committee of their entitlement, or "right", to vote at a meeting of that committee where deferred business is being dealt with is legally capable of being achieved only by an explicit provision in primary or secondary legislation, or that standing orders made in accordance with relevant legislation may not, in principle, be used to achieve that end.

54. The words "[subject] to the provisions of this Act", at the beginning of paragraph 42, do not reduce the ambit of that provision in enabling the entitlement to vote to be restricted in specified circumstances without explicit statutory authority. And there are no other provisions in the 1972 Act with that effect. There are, of course, certain provisions in the statutory scheme whose effect is to disentitle members from voting in particular circumstances. These are specific exceptions for which Parliament has provided (see paragraph 21 above). But the fact that such provisions have been made for those categories of councillors in those specific circumstances does not affect a local authority's power to make standing orders under paragraph 42 of Schedule 12. And it is not to be inferred from the enactment of those other statutory provisions that the legislature was seeking to identify the only circumstances in which the removal or restriction of the entitlement to vote was appropriate. Notwithstanding the existence of the specific exclusions in other statutory provisions, authorities are still free to put in place their own restrictions by means of standing orders.

55. The provision in section 31(10) of the Localism Act 2011, which confers the power to make standing orders to exclude members with pecuniary interests, is therefore not to be taken as implying the need for explicit provisions with similar effect for the making of standing orders to remove or restrict the entitlement to vote. Section 31(10) is simply the provision creating such a power in the specific context of pecuniary interests. It has no wider significance for the making of standing orders.

56. Seeking support for his argument that councillors' "right to vote" is "sacrosanct", subject only to express statutory provisions to limit it, Mr Harwood placed reliance on the definition of a "seat" in paragraph 4(1) of Schedule 1 to the 1989 Act. But I do not think that provision assists him. Its reference to an entitlement to vote, without more, does not limit or qualify the power in paragraph 42 of Schedule 12 to the 1972 Act. Properly understood, the entitlement to vote referred to is one that is subject to other provisions restricting that entitlement, which would include not only the provisions of statute with such an effect – for example, those whose effect is to withhold the entitlement to vote from councillors with pecuniary interests or who have outstanding liability to council tax – but also standing orders of the kind we are dealing with here.

57. Finally, I do not think Mr Harwood's argument gains anything from the provisions for "proportionality" in section 15 of the 1989 Act. Under section 15(4) authorities, committees and sub-committees must give effect "so far as reasonably practicable" to the principle of achieving political balance. I do not accept that this requirement is in principle offended by the making of standing orders to deal with the entitlement to vote on matters deferred from an earlier committee meeting. In some instances of deferred consideration, depending on which councillors happen to have attended and voted on the first occasion, it may not be "reasonably practicable" to ensure that those who are present and entitled to vote on the second occasion reflect the political composition of the authority or do so in the same proportions as on the first occasion. Ensuring political balance in every case where the arrangements under paragraph 11.4 of the Rules apply will not always be possible. But if the advantages of continuity in the entitlement to vote on a particular matter are to be secured, provisions for the entitlement to vote on the deferred proposal which are inherently rational will not, in my view, be incompatible with the provisions of section 15, in particular the objective of reasonable practicability in subsection (4).

58. This conclusion is, I think, consistent with the reasoning of Stuart-Smith J., as he then was, in *R. (on the application of Bridgerow Ltd.) v Cheshire West and Chester Borough Council* [2015] PTSR 91. In that case the terms of reference applicable to the committee in question provided for panels "comprising" three members on a politically proportionate basis to be convened ad hoc to hold hearings to determine licensing matters. It was plain from the constitution that the power to determine applications for the renewal of sexual entertainment venue licences had been sub-delegated in that way, that the word "comprising" was prescriptive and the decision therefore could only lawfully be taken by a three-member panel. It was therefore not open to the full licensing committee to arrogate that power to itself. The decision to refuse the application had been taken by a committee with no power to do so (paragraphs 33, 36, 37, and 42). That conclusion, in the circumstances of that case, does not seem relevant to the intrinsic lawfulness of the council's arrangements for voting on deferred matters in paragraph 11.4 of the Rules. That case and the issues that arose in it were quite different from this.

59. I therefore agree with Morris J. that the power to make standing orders under paragraph 42 of Schedule 12 enables local authorities lawfully to regulate the conduct of their proceedings and business by, among other things, restricting the entitlement of councillors to vote in specified circumstances, including the circumstances here, in which applications for planning permission are deferred from one meeting of the Development Committee to the next.

60. This understanding of the provision in paragraph 42 of Schedule 12 is, in my view, supported by the reasoning in this court in *Armstrong-Braun*. In that case the Court of Appeal, though it allowed the application for judicial review, accepted that the relevant standing order could, in principle, be made for the regulation of the county council's "proceedings and business" under the empowering provision in paragraph 42 of Schedule 12 to the 1972 Act. However, it considered that the county council, in making the standing order, had not given proper consideration to its full implications for local democracy. It accepted that the concept of regulating the "proceedings and business" of a committee embraced substantive matters as well as procedural. The effect of the standing order there was to prevent a member from adding a matter to the committee's

agenda for a particular meeting unless the motion was seconded. The court was prepared to accept this was a standing order "for the regulation of [the] proceedings and business" of the committee in question even though it could operate to prevent a councillor introducing a matter of interest or concern to residents of the ward he had been elected to represent.

61. In the view of Schiemann L.J. the issues raised in that case went "to the heart of the democratic process" (paragraph 3 of his judgment). He accepted that there was nothing unlawful about a standing order requiring there to be a proposer and a seconder of a motion before it was put on the agenda, that such a requirement could be said to be concerned with the regulation of the council's "proceedings and business", and that the standing order in question came within the enabling provision in paragraph 42 of Schedule 12 to the 1972 Act (paragraph 18 of his judgment). He noted that the statute gave "no express right" to each councillor to have any matter put on the agenda as a motion. But he did "not regard the present problem as best analysed in terms of rights and duties". Rather, it "should be approached as a matter of administrative law". The "relevant question", he said, was this: "does the [1972] Act permit a Standing Order in terms such as the one under discussion?" (paragraph 31). He did not think the standing order was contrary to the "policy and objects" of the 1972 Act, "construed as a whole". And it was "not outwith the enabling statutory provisions entitling the council to make Standing Orders for the regulation of its proceedings and business" (paragraph 36). But in his view, before such a standing order was adopted, "the matter should be given most anxious consideration" (paragraph 37). And the county council had not considered "the full democratic implications of the alterations which they were proposing" (paragraph 38).

62. Sedley L.J. agreed that the impugned standing order was "an aspect of the regulation of the proceedings and business of a local authority within paragraph 42, Schedule 12, to [the 1972 Act]". It did not follow, however, that any such standing order would necessarily be consistent with the "policy and objects of the constitutive legislation". That was a "separate and larger question". The standing order in question was "capable of being adopted without violation of the policy and objects of the legislation provided it is adopted on relevant, logical and sufficient grounds". But the rule had been adopted in that case "without anything approaching proper consideration of the relevant issues and must be quashed" (paragraph 49 of his judgment).

63. There was no doubting the importance of councillors' responsibilities as "elected individuals through whom alone the electors have a voice in the institutions of government". Sedley L.J. went on to say that "… [every] councillor's voice and vote is equal", and it followed that "the proceedings and business of the Council cannot lawfully be arranged so that (however innocent the intent) particular councillors are unjustifiably silenced or otherwise disadvantaged in doing what they have been elected to do" (paragraph 53). He added that "[none] of this … is aptly described in terms of councillors' rights". It had to do with "the exercise and possible abuse of power by a local authority acting collectively". If there were "rights" involved, "they are those of the people of the county" (paragraph 54). There might be grounds on which a rule such as this could be adopted without violating the relevant principles (paragraph 58). But the challenge succeeded "because the amendment was adopted without any consideration whatever of its legal and constitutional implications" (paragraph 59).

64. Blackburne J. also accepted that "the relevant power", to make the standing order, exists. This did not turn simply on the wording of paragraph 42 of Schedule 12, but on the "policy and objects" of the 1972 Act. The difficulty, however, was the lack of evidence that the county council had given "any informed thought" to the opportunities afforded to single members to ventilate their views (paragraph 63).

65. In the light of those conclusions in the judgments in this court in *Armstrong-Braun*, I do not think it can be said that the standing order in paragraph 11.4 was, in principle, a standing order which the council had no power to make. Its making was, in my view, a lawful exercise of the power in paragraph 42 of Schedule 12 to the 1972 Act.

66. I do not accept that paragraph 11.4 can be said to have the malign effect referred to by Sedley L.J. in *Armstrong-Braun* – that it "unjustifiably silenced or otherwise disadvantaged" councillors "in doing what they have been elected to do". It did not prevent any member present at the committee meeting in September 2021, whether or not he or she had also been present at the meeting in April 2021, from taking part in the committee's deliberations on the brewery company's proposal. What it did, subject to the proviso on quoracy, was to restrict voting at the September meeting to those who had been present on both occasions and would therefore have heard the whole of the relevant discussion. The evident purpose of the restriction was not arbitrary, unequal or undemocratic, but went to consistency and fairness in the conduct of the committee's process of decision-making. Unlike the restriction considered by the court in *Armstrong-Braun*, it did not preclude any matter of interest or concern to an individual councillor coming before the committee for debate – with, potentially, an opportunity for members to exercise their entitlement to vote. It had the effect of restricting members' entitlement to vote, in specified circumstances, on a matter already before the committee, without differentiating between one councillor and another except on the basis of their previous participation in the discussion of that matter. That, in my view, does not amount to an unjustifiable silencing or disadvantaging of any councillor or councillors. And it is perhaps telling that there is no complaint here from any councillor who was present at the September meeting and would have wished to vote but could not, or who would have attended that meeting but did not do so because, under the standing order, he or she would not have been entitled to vote.

67. It is no part of the trust's case in these proceedings that the council, before resolving to adopt the standing order in paragraph 11.4, failed to take into account considerations bearing on any matters of the kind to which this court referred in *Armstrong-Braun*. This was the basis on which the councillor's appeal was upheld in that case. No such argument, or any evidence pointing to such a conclusion, has been put forward here.

68. Several other cases were referred to in argument. In my view, however, none of them is authority either for the proposition that standing orders made under paragraph 42 of Schedule 12 do not enable local authorities to restrict members' entitlement to vote, either generally or in the particular way in which that has been done by the council in this case, or for the proposition that there must be express provision in statute specifying the circumstances in which such a restriction applies.

69. I do not think we get very much assistance on the issue we have to resolve from cases decided before the enactment of the present statutory scheme for local authority decision-making in the 1972 Act and subsequent statutes.

70. Mr Harwood relied on observations made by Pickford J. in *Jackson*. That was a case concerning section 3(8) of the Local Government Act 1894, which provided that "at the annual meeting the parish council shall elect from their own body or from other persons qualified to be councillors of the parish, a chairman, who shall … continue in office until his successor is appointed". Pickford J. said (on p.441):

> "The question is whether at the first meeting of a newly elected parish council the chairman of the old council is entitled, not only to preside, but also to vote. Under the Act of 1894 a parish council consists of a chairman and councillors. The chairman need not be one of the elected councillors; he may be chosen from outside, but when elected he is a member of the council possessing all the rights of a member of the council, and is entitled to vote on all questions before the council. Sub-s. 8 of s. 3 of the Act of 1894 says that at the annual meeting the parish council shall elect a chairman who shall continue in office until his successor is elected. I think that means that he continues in office for all purposes even though the council of which he was an elected member has ceased to exist, and a new one has been elected, and that he continues in office in the new council with the same rights of voting and having a casting vote as he had in the lifetime of the old council."

71. Thus it was held that the chairman of the parish council was entitled to vote and to give a casting vote on the election of the new chairman, and that the election of the new chairman was valid. But the reference in that passage of Pickford J.'s judgment to "rights of voting" should not, I think, be taken as reinforcing the proposition that the exercise of such a right, or entitlement, is incapable of being restricted unless there is express provision in statute with that effect.

72. More recent case law, following the coming into force of the 1972 Act and subsequent local government legislation does not, in my view, strengthen Mr Harwood's argument.

73. Mr Harwood referred to two cases about the conduct of site visits by members of a planning committee, *R. (on the application of Ware) v Neath Port Talbot County Borough Council* [2007] EWCA Civ 1359 and *R. (on the application of Etherton) v Hastings Borough Council* [2009] EWHC 235 (Admin). I do not think either of these cases bears on the point we are considering here. Neither required the court to investigate a local authority's constitution, or any of its standing orders, to deal with an argument that the local authority had acted beyond its powers under the legislative scheme for local government decision-making. Neither concerned an authority's statutory power to make standing orders restricting voting at a committee meeting.

74. In *Ware*, the council's monitoring officer advised members of its planning committee that the committee's decision on a planning application might be challenged if they did not attend a site visit before voting on it. Some councillors consequently withdrew from voting. A challenge on the grounds that those councillors had been wrongly advised was ultimately rejected in the Court of Appeal, because the members concerned had exercised their own judgment in deciding not to vote (see paragraphs 40 and 41 of the judgment of Mummery L.J.). It was not suggested that there was any provision in the council's constitution for the appropriate composition of a committee when a site visit had taken place, or for the convening of a sub-committee. There was no parallel with the case before us.

75. In *Etherton*, the authority's protocol for planning applications said that a councillor was expected to attend a site visit before participating in discussion and voting on an application, unless he could confirm that he had sufficient relevant knowledge of the site. It was held that the fact that voting members who had not been on the site visit knew the site well, which the minutes recorded, did constitute "sufficient relevant knowledge" under the protocol. Again, there is no parallel with the case before us. The case did not concern the scope of the power to make standing orders in paragraph 42 of Schedule 12 to the 1972 Act.

76. In *R. (on the application of Friends of Hethel Ltd.) v South Norfolk Council* [2011] 1 W.L.R. 1216, it was held that the provision in paragraph 39 of Schedule 12 to the 1972 Act was offended by a provision in the local authority's constitution which stated that if an area planning committee rejected an officer's recommendation by less than a two-thirds majority the application for planning permission would be referred to a district-wide committee. This conclusion does not go to the lawfulness of standing orders whose effect is only to provide for the exercise of members' entitlement to vote where a matter is considered at successive committee meetings. The standing order with which we are concerned does not touch the principle of majority voting enshrined in paragraph 39 of Schedule 12.

77. The case to which Mr Harwood gave greatest prominence in his submissions was *Hartlands*. In that case Scoffield J. had to consider whether the local planning authority, Derry City and Strabane District Council, acting under its Planning Committee Protocol, could lawfully restrict the right of members to vote in accordance with section 30 of the Planning Act (Northern Ireland) 2011 ("the 2011 Act"). Section 30 provided for the holding of "pre-determination hearings". The Planning Committee Protocol stated that members of the Planning Committee who had not been present at an earlier pre-determination hearing could not subsequently vote on the application for planning permission itself when it came to be determined. Section 30(2) and (3) provided that "(2) [the] procedures in accordance with which any such hearing is arranged and conducted … and other procedures consequent upon the hearing are to be such as the council considers appropriate" and "(3) any right of attendance at the hearing (other than for the purpose of appearing before and being heard by the committee) is to be such as the council considers appropriate". Thus, under subsection (2), a council could determine the procedures it considers appropriate both for the pre-determination hearing itself and also for "any other procedures consequent upon the hearing". The question for the court was whether the council's power to adopt a "procedure" consequent upon a pre-determination hearing enabled it to restrict the entitlement of members to vote at a later meeting of the Planning Committee.

78. Scoffield J. said it was "a basic premise" of the Local Government Act (Northern Ireland) 2014 ("the 2014 Act") that "councillors are entitled to vote in council, or in committees to which they have been appointed, and the question of whether or not they should vote is, at least in general, a matter for their own individual judgment, subject always to sanction for breach of the Code of Conduct and, ultimately, to electoral accountability for their actions" (paragraph 111 of the judgment). He accepted the applicant's contention that section 30(2) of the 2011 Act "does not provide adequate statutory authority for a council to deprive an elected member of his vote in circumstances in which he wishes to exercise it" (paragraph 112). He continued (in the same paragraph):

> "[112]… Any such authority would, in my view, require to be clearly stated, given that it is such a significant departure from the basic democratic principles to which the 2014 Act gives effect. Reading section 30 of the 2011 Act as a whole, it appears to me that the word "procedures" is referring to the practical arrangements for a pre-determination hearing and the conduct of the hearing – to include matters such as attendance, venue, timing, speaking rights, etc. – rather than the substantive decision-making process which the council (or committee) will ultimately have to undertake. Put another way, as the applicant submitted: "… the right to vote is not a matter of procedure. Procedures precede the vote. The vote is the decision, not the procedure before it.""

79. "Generally", he said, "where a councillor is to be disabled from voting on a particular issue, one would expect this to be clearly spelt out in statute", as for example in section 28(1)(a) of the Local Government Act (Northern Ireland) 1972 – where the member has a pecuniary interest in the matter being considered (paragraph 123). He noted that the term "procedures" in section 30(2) of the 2011 Act "has generally been understood to relate to practical or administrative arrangements for the meeting and debate, rather than the substance of the voting process, in previous departmental publications" (paragraph 125).

80. Scoffield J. would not have held that the provision was *Wednesbury* unreasonable. He recognised that its purpose was "clear and rational", and that it was intended to ensure that members participating in the vote were "fully informed", and to encourage members to attend pre-determination hearings (paragraph 127). But he accepted that in the circumstances of the case before him it was "not lawful" for the council "to disqualify certain members from voting on the basis that they had not attended the pre-determination hearing". He concluded (in paragraph 130):

> "[130] … I can see some considerable force in a number of the submissions made on behalf of the Council to the effect that councillors should not be permitted to vote if they have been absent from any substantial pre-determination hearing in which significant evidence has been presented and oral representations made, particularly in those councils [where] such meetings are not recorded and/or transcribed. If, however, it is to be within the power of a council to remove an individual elected member's right to vote, it seems to me that this should be clearly spelt out in statute. …".

81. In my view, whether or not that issue in *Hartlands* was correctly decided, Scoffield J.'s decisive reasoning can be distinguished from the true analysis in this case. I agree with the relevant conclusions of Morris J. to that effect in the court below (in paragraphs 122 to 127 of his judgment).

82. In the first place, section 30(2) of the 2011 Act specifically dealt with "procedure" at pre-determination hearings and "procedures consequent upon" such hearings. In my view the concept of "procedure", at least in its context here, is not to be equated with the concept of "proceedings and business" in paragraph 42 of Schedule 12 to the 1972 Act, which seems to me to be materially wider in scope, and wide enough to cover the standing orders with which we are concerned in this case. I agree with Morris J. (in paragraph 123 of his judgment) that the phrase "proceedings and business" encapsulates

both the activities of deliberation and voting which the committee conducts, and the procedure by which the conduct of those activities is regulated.

83. Secondly, as Mr Phillpot and Mr Corner pointed out, the Northern Ireland legislation contains a parallel provision to paragraph 42 of Schedule 12 to the 1972 Act, though not merely as a power but as a duty. Section 37(1) of the 2014 Act provides that "[a] council must make standing orders for the regulation of the proceedings and business of authorities". And there seems to have been no suggestion in *Hartlands* that a restriction on the entitlement to vote in the authority's Planning Committee Protocol similar to that in paragraph 5.4 of the Rules was ultra vires. That restriction stated that "[members] must be present in the council chamber for the entire item, including the Officer's introduction and update; otherwise they cannot take part in the debate or vote on that item". It does not appear to have been submitted that this was akin to a standing order of the kind contemplated in section 37 of the 2014 Act – or in paragraph 42 of Schedule 12 to the 1972 Act (see paragraph 91 of Scoffield J.'s judgment).

84. Thirdly, it is important to keep in mind that *Hartlands* concerned the lawfulness of a standing order whose effect was not the same as that of either paragraph 5.4 or paragraph 11.4 of the Rules. Paragraph 11.4 is concerned with preserving continuity in the members of a committee deciding whether an application for planning permission for a proposed development should be granted, when that application has already been before the committee for determination and the decision is, for one reason or another, deferred to a further meeting of the committee. In those circumstances the meeting at which the decision is made is effectively a continuation of the proceedings at the original meeting. The rule obviates a risk that councillors voting at the second meeting may not have had the benefit of the discussion of the proposal that took place at the first. It gives weight to the continuity of proceedings, and to the value of ensuring that in these circumstances the entitlement to vote is kept to those councillors who have been present throughout the committee's deliberations on the application for planning permission. An effect of the rule will sometimes be that a smaller number of members may ultimately vote on the matter than would otherwise be so. This, however, is the balance the council has struck in giving weight to the continuity of proceedings. If quoracy is achieved under the council's constitution, as it was here, the vote will be valid. If not, no vote can be taken and the application will need to be considered afresh.

85. In conclusion, I accept the argument of Mr Phillpot and Mr Corner that paragraph 42 of Schedule 12 to the 1972 Act empowered the council lawfully to make a standing order in the form of paragraph 11.4 of the Rules. This was, in my view, a measure within the legitimate reach of standing orders "for the regulation of [the council's] proceedings and business". To restrict the entitlement to vote to those members who had been present on the first occasion when the matter in question was considered was not merely rational but properly within the council's powers under the local government legislation. The standing order in paragraph 11.4 was lawful. And the council's decision on the brewery company's planning application was a lawfully made decision in accordance with the arrangements it provides.

86. It follows that there is no need to consider the alternative grounds in the brewery company's respondent's notice, namely that in providing for restrictions on the entitlement to vote on deferred matters, the council made provision for the composition of the Development Committee, and that the effect of the relevant provisions in the constitution – in particular section 19 of Part B – is that when the deferred consideration

of an application is begun on the subsequent occasion the Development Committee delegates the power to determine the application to a sub-committee comprising only those members present when the application was first considered.

87. There may or may not be merit in those grounds, but in the circumstances it is unnecessary for us to reach a decision upon them. In my view the appeal must fail on the single ground in the appellant's notice.

Conclusion

88. For the reasons I have given, I would dismiss the appeal.

Lord Justice Coulson:

89. I agree with my Lord, the Senior President of Tribunals, that this appeal should be dismissed. I had originally understood that this appeal was primarily concerned with the proper interpretation of the words "regulation of their proceedings and business" in Schedule 12, paragraph 42, and whether or not that permitted voting restrictions of the kind in issue here. That is the issue addressed at paragraphs 63 and 64 of the appellant's skeleton argument; paragraphs 4 and 46-55 of the first respondent's skeleton argument; and paragraphs 30-33 of the second respondent's skeleton argument.

90. However, it became apparent during the hearing of the appeal that a natural interpretation of the words "regulation of their proceedings and business" would plainly include the making of standing orders that imposed voting restrictions of this kind. That distinguishes this case from *Hartlands,* where the words in the statute were concerned with "procedure", which in any event had a distinct meaning in planning law in Northern Ireland. The view that voting restrictions of this sort fell within the words of the 1972 Act is entirely consistent with *R (Armstrong-Braun)*, as my Lord has demonstrated. It is also consistent with the definition of "proceedings" in Erskine May.

91. In consequence of this, it seemed to me that Mr Harwood was driven to emphasise a more extreme argument (which had been foreshadowed in his skeleton argument), to the effect that, since the right to vote was implicit in the 1972 Act, it could only be restricted or removed by express statutory provision and not otherwise. In effect, his argument was that a restriction on voting of this kind could only be made by statute, and not by standing order.

92. That is a very wide-ranging submission, with potentially significant consequences. Given that the statutory exceptions are so modest, it would mean that, potentially, a large swathe of local authority voting restrictions of this kind, in force all over the country, would be unlawful.

93. I do not accept this submission. I can see no basis for it in the 1972 Act. It is not a part of any other relevant statute. Nor is there any authority for it in any of the reported cases.

94. Mr Harwood's basic position was that the introductory words in paragraph 42, namely "subject to the provisions of this Act", meant that the exceptions to the implicit right to

vote brought about by the Act had themselves to be expressly stated within the Act. I do not consider that those words can bear the weight ascribed to them. Nowhere else in the 1972 Act is there any constraint on the content of paragraph 42, and there is nothing in the Act which explicitly or impliedly excludes from its scope restrictions on members voting where that might be considered appropriate. Furthermore, I consider that the various particular restrictions that have been identified by statute are properly considered as mandatory restrictions: in other words, that is Parliament telling local authorities that those members *must* be restricted from voting in those circumstances. But that does not mean to say that the list of voting restrictions is definitive or exhaustive. That is a matter for the individual local authority.

95. No policy justification for such a rule was put forward. As I have indicated, it seems to me that local authorities must be permitted to regulate their proceedings and business without interference, unless they create a restriction which is unlawful (because it breaches an express statutory provision), or is irrational. In the present case, it is accepted that the rule in question is not irrational, and there is no statutory provision which would make the restriction unlawful.

Lord Justice Bean:

96. I agree with both judgments.