Neutral Citation Number: [2014] EWHC 487 (Admin)

Case No: CO/7463/2012

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/02/2014

Before :

MR JUSTICE FOSKETT

- -

Between :

LANGTON HOMES LIMITED **Claimant**
- and –

(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

- and –

(2) HARBOROUGH DISTRICT COUNCIL **Defendants**

- -
- -

Gregory Jones QC (instructed by **Freeth Cartwright LLP**) for the **Claimant**
Sasha Blackmore (instructed by **Treasury Solicitor**) for the **First Defendant**
The Second Defendant did not appear and was not represented

Hearing date: 11 February 2014

- -

Judgment

MR JUSTICE FOSKETT:

Introduction

1. This case concerns the proposed development by the Claimant of the site of the former Bulls Head Public House in the village of Tur Langton in Leicestershire. The public house ceased operating as such in the period 2000-2002.

2. Tur Langton is a small rural village just under 6 miles to the north of Market Harborough. It is in the district of Harborough for which the Second Defendant is the local planning authority (the 'LPA').

3. The development proposed the demolition of the former public house and the construction of 7 dwellings with associated landscaping and car parking. The site upon which the public house stands extends eastwards to its eastern boundary marked by what is known as the "Eastern Hedge". Within that hedge on its western side is an area that was used as gardens and land associated with the public house.

4. By a notice dated 13 June 2012 the LPA refused the planning application that the Claimant had submitted on 20 April 2012. The Claimant appealed to the First Defendant and the appeal was determined by his inspector, Ms Julia Gregory, BSc (Hons), BTP, MRTPI, MCMI. She held a hearing on 27 February 2013 (and paid a site visit that day). Her decision letter, dismissing the appeal, was promulgated on 8 May 2013.

5. The Claimant has applied, pursuant to section 288 of the Town and Country Planning Act 1990 ('the Act'), for an order that the decision letter should be quashed and that the appeal be remitted to the First Defendant for re-determination.

6. The First Defendant resists that application. The Second Defendant has played no direct part in the proceedings.

Tur Langton and the application site

7. As indicated in paragraph 1 above, Tur Langton is a small village in a rural setting. The Inspector recorded that although there are some services and facilities within the wider area, the village itself "only has a village hall, public house and a church" and the main bus service is only hourly during the working day from Monday to Saturday. The public house referred to by the Inspector is not the disused public house the subject of this case.

8. Most of the village is designated a Conservation Area and, at least from 2005, the whole of the application site was included within the Conservation Area. An appreciation of its character can be obtained from the following extract from the Conservation Area Character Statement:

> "The Conservation Area embraces almost the whole of the village which comprises loose linear development along its T shape of roads. These are formed from the main B6047 Melton Road with the long axis being the gently curving Main Street. A special feature of the Main Street is its wide grass verges,

> frequently backed by brick walls. These verges widen at the eastern end by the junction with the Melton Road where a group of white painted buildings, including the Bull's Head Public House, closes the view. At the far (western) end of the Main Street is Manor Farm, not readily visible, which comprises the early 17th Century stone Manor House, the remains of a 13th Century chapel, now a Scheduled Ancient Monument, and the agricultural buildings. The visible buildings closing the west end of Main Street are a group of 17th century red brick cottages incorporating an arch to the rear and some later 19th century red brick estate cottages.
>
> The character of Tur Langton is the loosely spaced buildings along Main Street, and the tree filled spaces between. The older buildings are interspersed with 20th century infill houses. The buildings are a variety of ages and type, but are mainly of red brick with slate … roofs. There are a number of former farmhouses and farmyards on the main street the most notable of which are close to the junction with the B6047. These include 17th century Crox farmhouse to the north with its cobbled enclosed yard, and its farmyard on the corner adjacent to it. This has a mud wall having slate coping curving around the road corner. This mud wall with wide verge in front is a notable vista stop when approaching the village from the south. Next to it is Fargate Farm whose farmhouse is timber framed with an extension in mud; it was all formerly thatched. On the opposite side is the 19th century former Elms Farm. The most remarkable building in the Conservation Area is the Church of St Andrew of 1866 by J Goddard. Of red brick with steeply slate roof and offset tower and spire it is set back from the road. It is visible across the fields from the B6047 to the south as well as from the Main Street. The buildings along the Melton Road in general cling to the road and include 19th century vernacular cottages. The mid 20th century developments at the eastern skirts of the settlement are excluded from the Conservation Area."

9. The village is subject to what are termed Limits of Development ('LOD'). Since this is a central matter in the case, it is important to see the relevance of this consideration and the context in which it is said on behalf of the Claimant that the Inspector misdirected herself.

10. The 'Harborough District Saved Local Plan - 2007', extant at the time of the LPA's decision and that of the Inspector, provides at paragraph 4.57 that for the towns and larger villages in the district "limits to development have been defined around each settlement." Paragraph 4.59 says this:

> "The purpose of defining limits to development is to delineate the outer boundaries of villages and towns, within which development may be acceptable. Beyond the limits to development, countryside or green wedge policies **(Policies**

> **EV/5 and EV/2)** will normally guide new development. In defining limits to development the District Council has had regard to matters such as the protection of the setting of villages and towns and the form and character of existing development. Where possible limits to development have been drawn to correspond with natural or physical boundaries to avoid confusion or misinterpretation. However, this is not always desirable or realistic. For example, limits to development may not follow domestic property boundaries where there are houses with extensive grounds on the edge of a village and where development within the grounds would harm the setting of the village."

11. This is the lower case text preceding the saved Local Plan policy HS8.

12. The Claimant's argument is that that policy had to be viewed in the context of what is said to have been the LPA's intention (by the time the Inspector's decision came to be made) to dispense with it as a tool of development control. I will turn to that in due course (see paragraphs 26 and 29-58 below). However, simply in order to see its potential relevance to the proposed development, it needs to be appreciated that part of the proposed development would lie outside the LOD line for Tur Langton on the eastern side of the development site. This is illustrated by the plan at Appendix 1 to this judgment showing the proposed development and the LOD line (being the dotted line running roughly north-south from just to the west of the two trees on the northern side of the site to just below the gap between the 'P' and the 'l' of the words 'Mount Pleasant' on the plan). The LOD line runs across the old public house site and it can be seen that proposed plots 5, 6 and 7 are beyond this line to the east. The line of the Eastern Hedge (see paragraph 3 above) can readily be seen on that plan.

13. Two reasons were given by the LPA for refusing planning permission, only one of which remained relevant at the time the Inspector came to consider her decision and it related to the LOD line. It was expressed by the LPA thus:

> "The development extends nearly 60m outside of the Limits to Development of Tur Langton. This is contrary to the character of the rural settlement and the surrounding countryside and is unacceptable in a village which is not considered suitable for any more than limited infill development. The proposal is therefore contrary to Policies CS2, CS11 and CS17 of the Harborough District Council Core Strategy and no other material considerations indicate that this policy should not prevail."

14. That decision was made in June 2012. It is, of course, plain from the reason for the decision to which I have referred that the LOD line was of significance to the LPA in the context of Tur Langton's character as a "rural settlement" and its "surrounding countryside".

15. By the time of the hearing before the Inspector in February 2013, well-known changes in the national planning context were afoot which were leading to re-consideration of local planning policies. On 27 March 2012 the Government had published the

National Planning Policy Framework ('NPPF'). The essential philosophy is summed up in paragraph 14:

> "At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking.
>
> For plan-making this means that:
>
> ● local planning authorities should positively seek opportunities to meet the development needs of their area;
>
> ● Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
>
> - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
>
> - specific policies in this Framework indicate development should be restricted.
>
> For **decision-taking** this means:
>
> ● approving development proposals that accord with the development plan without delay; and
>
> ● where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
>
> - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
>
> - specific policies in this Framework indicate development should be restricted."

16. In Annex 1 entitled 'Implementation' the following appeared:

> "210. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
>
> 211. For the purposes of decision-taking, the policies in the Local Plan (and the London Plan) should not be considered out-of-date simply because they were adopted prior to the publication of this Framework.
>
> 212. However, the policies contained in this Framework are material considerations which local planning authorities should

> take into account from the day of its publication. The Framework must also be taken into account in the preparation of plans.
>
> 213. Plans may, therefore, need to be revised to take into account the policies in this Framework. This should be progressed as quickly as possible, either through a partial review or by preparing a new plan.
>
> 214. For 12 months from the day of publication, decision-takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with this Framework.
>
> 215. In other cases and following this 12-month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
>
> 216. From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:
>
> - the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
>
> - the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
>
> - the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given) …."

17. Paragraph 214 of that guidance would have been relevant to the position of the "saved" policy to which I have referred at the time of the LPA's decision even if there was "a limited degree of conflict" with the NPPF. Mr Gregory Jones QC, for the Claimant, draws attention to paragraph 213 also in the context to which I will refer in more detail below (see paragraphs 59-62).

18. The hearing held by the Inspector took place in February 2013 and, as I have indicated, the decision letter was promulgated in May 2013. Between the hearing and the decision letter, certain matters affecting the Harborough District occurred to which I will make reference shortly.

19. The policies to which the LPA's reasoning referred were contained in the 'Harborough District Local Development Framework – Core Strategy 2006-2028'

which was adopted in November 2011. Policy CS2 dealt with the policy relating to the delivery of new housing in the district as follows:

> "Policy CS2: Delivering New Housing
>
> The overall housing provision of at least 7,700 dwellings between 2006-2028 will be distributed as follows:
>
> • Market Harborough at least 3,300 dwellings
>
> • Leicester PUA (Scraptoft, Thurnby and Bushby) at least 880 dwellings
>
> • Lutterworth at least 700 dwellings
>
> • Broughton Astley at least 400 dwellings
>
> • Rural Centres and selected rural villages at least 2,420 dwellings.
>
> a) Limits to Development boundaries around settlements will be used to shape their future development as follows:
>
> • Limits to development will be reviewed through the Allocations DPD [*Development Plan Document*] in order to enable the scale of new housing envisaged to be accommodated; and
>
> • Housing development will not be permitted outside Limits to Development (either before or following their review) unless at any point there is less than a five year supply of deliverable housing sites and the proposal is in keeping with the scale and character of the settlement concerned …."

20. The message of that policy was that LODs would be "reviewed through the Allocations DPD", but that LODs would remain as a development parameter unless a 5-year supply of deliverable housing sites was lacking and the particular proposal was in keeping with the scale and character of the settlement concerned. There was no suggestion of wholesale abandonment of LODs as a development parameter.

21. However, it is argued on behalf of the Claimant that that position changed with the promulgation by the LPA of the 'Scoping Consultation' document for the 'New Local Plan for Harborough District' published in March 2013. The background to the 'Scoping Consultation' was expressed in the document as follows:

> "On 3 December 2012, the Council resolved to prepare a new Local Plan for Harborough District. The new Local Plan will incorporate a focused review of the Harborough Core Strategy (adopted in November 2011) and will also identify key areas of land for development. The refreshed Core Strategy and the strategic allocations will be prepared, consulted upon and used

> as a single document and will be known as the new Local Plan for Harborough District. An Allocations Plan will no longer be prepared. Further details are set out below and your views and comments on the proposed contents of the new Local Plan are invited at this stage."

22. It continued thus:

> "The Harborough Core Strategy was adopted in 2011. However, since then a number of important changes have been introduced by the Government in respect of local planning policy, including:
>
> • The abolition of the majority of national Planning Policy Guidance Notes and Planning Policy Statements and their replacement by the National Planning Policy Framework in 2012.
>
> • The announcement of the forthcoming abolition of Regional Strategies (previously known as Regional Spatial Strategies), which provided the region-wide basis for the preparation of local planning policy and identified the number of houses to be provided by each local planning authority within the region.
>
> • The introduction of the presumption in favour of sustainable development and the emphasis upon local planning as a means of meeting development needs in a flexible and enabling rather than restrictive manner.
>
> • The Localism Act and the introduction of Neighbourhood Development Plans (NDPs).
>
> ...
>
> • The abolition of the previous Local Development Framework system and its replacement with a simpler system of Local Plans.
>
> The Council has undertaken an assessment of the extent to which the Core Strategy conforms to the latest national planning policy, as set out in the National Planning Policy Framework (subsequently referred to as "the Framework"). The assessment identified a number of Core Strategy policies which do not fully conform to the Framework and some areas of policy set out in the Framework which are not reflected in the Core Strategy.
>
> A number of the areas of non-conformity are relatively minor. However, the Core Strategy could be seen to not fully conform to the Framework in relation to housing numbers. This is because the housing numbers set out in the Core Strategy are

> taken from the 2009 East Midlands Regional Strategy, rather than more up-to-date evidence of housing need across the Leicester and Leicestershire Housing Market Area (HMA). Harborough has traditionally experienced high demand for new housing and a buoyant housing market has attracted significant interest from housing developers. Further evidence of housing requirements is being collected and will be used to inform the preparation of the new Local Plan …."

23. The proposed new Local Plan was described as follows:

> "The new Local Plan will be streamlined and concise, with a strong strategic focus. It will not include the level of detail and breadth of policies of the 2001 Local Plan. However, it will have at its core the same principles of sustainability and protection of Harborough District which underpin the Core Strategy and 2001 Local Plan.
>
> However, these objectives will be achieved in a slightly different way using a more flexible policy approach including criteria-based policies to assess planning applications. This replaces the traditional approach of drawing lines on plans to identify areas for development and areas of development constraint. Criteria-based policies include a series of tests, which could, for example relate to the ability of the local highway network to accommodate additional traffic and the need to preserve undeveloped areas which are significant to the character or appearance of a settlement …."

24. The purpose of the Scoping Consultation document is set out as follows:

> "The first stage in preparing the new Local Plan is to "scope" the plan. This essentially means identifying the sort of policies that are needed within the plan in order to guide the future development of the District. Equally important will be to identify what sort of policies are no longer needed for the District. The purpose of this current consultation is to seek the views of interested parties on the proposed contents of the new Local Plan (set out in sections 2 and 3 of this document). These views will be used to finalise the scope of the Plan and to inform the identification of any further evidence requirements. Any additional evidence needed will be sought and used to inform the plan preparation stage, prior to public pre-submission consultation on a draft Plan in autumn 2013. This draft Plan is expected to be submitted to the Secretary of State in spring 2014 and subject to an Examination in Public before it is adopted in September 2014."

25. Section 3 of the Scoping Consultation document is said to explore "the proposed new policies and the main policy areas where change is proposed in more detail, outlining the reasons for the proposed changes and seeking views on the proposed approach."

26. Section 3 is entitled "Proposed Main Policy Changes" and the first part deals with housing requirements and distribution across the District and describes how those matters will be assessed, the suggestion being made that greater flexibility in identifying need across the district will emerge following the revocation of the "Regional Strategy" (reflected in the East Midlands Regional Strategy) with the caveat that this flexibility would "have to be balanced against the capacity of settlements to accommodate additional housing." There was, however, a section entitled "Refreshing the approach to Limits to Development", the material parts of which are as follows:

> "The proposal is to add a new policy into the new Local Plan setting out how applications for development on non-allocated sites will be determined.
>
> Harborough's current Limits to Development were identified and consulted upon during the 1990's, before finally being adopted in the Harborough Local Plan in 2001. They formed part of a strategy which involved allocating sufficient land to meet all the District's housing and employment requirements, as set out within the Structure Plan. Since the adoption of the 2001 Local Plan, most of the sites allocated for housing have been developed. However, the limits to development have not been reviewed since 2001 and are now becoming increasingly out of date. Reviewing the limits wholeheartedly is not practicable, and would not safeguard them against becoming increasingly outdated again.
>
> Furthermore, preventing the development of sites beyond the Limits to Development increases development pressure upon sites within the Limits to Development. This can have some unfortunate results, including the demolition of large houses within Limits to Development and the redevelopment of their gardens for small estates of new housing, which do not always accord with the character of the surrounding area.
>
> It is proposed to meet the District's housing requirement by allocating sites of strategic importance (which are capable of accommodating a minimum of 50 dwellings) and setting criteria-based policy to manage the delivery of the remaining housing requirement. This means that it will no longer be possible to draw a line around all of the allocated sites and existing built up area. As such, a new approach is needed to allow for a more flexible response to applications to develop sites on the edges of our settlements.
>
> A new approach is suggested, which provides for greater flexibility in interpretation and implementation, to ensure the development of the most suitable sites, rather than simply placing a restrictive ring around the edge of settlements. The

> proposed new criteria-based policy would be used for determining planning applications for new housing and other developments on non-allocated sites on the edge of settlements. This policy should ensure that development only takes place on sustainable and suitable sites. This new policy will conform to the spatial strategy for Harborough as set out in Policy CS1 and would help to deliver the objectively assessed housing requirement for the District set out in CS2. The intention is to identify a housing target for each sustainable settlement in the District based upon evidence of:
>
> - housing need;
> - the ability of existing and proposed services, facilities and infrastructure to accommodate new development; and
> - the availability of suitable and deliverable sites.
>
> Housing targets would be identified for all sustainable settlements, defined as those which meet the criteria for Selected Rural Villages (as set out in CS17) and above in the settlement hierarchy. The settlement housing target would be expressed as a minimum number of houses to be developed in and adjacent to the relevant settlement. This settlement housing target would be an important consideration in the determination of planning applications and as such, is suggested as a policy criteria (*sic*). The intention is that this new policy will replace saved Local Plan policy HS8: Limits to Development."

27. As with all proposals in the Scoping Consultation document, respondents were asked to say whether they agreed or disagreed with the approach and to offer any comments or suggestions in relation to the proposed approach.

28. Mr Jones and Miss Sasha Blackmore, who appears for the Secretary of State, are agreed in principle that the Scoping Consultation document was a material consideration by the time the Inspector made her decision, but they differ on (a) whether she did indeed take it into account and, if she did, (b) whether her reasons for not attaching weight to it were adequate or adequately expressed. I will return to that issue when I have examined how the matter was argued before the Inspector at the hearing and then how matters were put before her in the period thereafter.

The hearing before the Inspector and the period thereafter

29. In the circumstances I will mention shortly (paragraph 32), it was plain to all those taking part in the hearing that it was likely that the Development Plan would change before long and possibly before the Inspector's decision was given. The LPA was already aware (and proceeding on the basis) that the East Midlands Regional Plan would be revoked (see paragraph 22 above) and that consequently the overall planning framework was subject to change. Provision was made to accommodate this on the basis I will describe below. However, the arguments for the Claimant before

the Inspector in relation to the LOD objection of the LPA can be summarised as follows:

> (i) the LOD did not correspond with any physical, functional or "ownership" boundary whereas the Eastern Hedge did;
>
> (ii) the part of the site lying to the east of the LOD made no positive contribution to the character of Tur Langton and its redevelopment would not harm its character;
>
> (iii) there had already been development authorised recently by the LPA beyond the LOD.

30. The third factor referred to in paragraph 29 above related to the grant of two planning permissions (known as the "fall-back positions") in relation to the site. In August 2011 the LPA authorised the erection of 8 dwellings on the site and in November 2011 it authorised the erection of 5 dwellings. The layouts of each proposed development appear respectively at Appendix 2 and Appendix 3 to this judgment. The Claimant's case advanced to the Inspector was that the 8-dwelling scheme extended 6 metres beyond the LOD line and the 5-dwelling scheme between 10-55 metres beyond the LOD line (the 55 metre distance presumably relating to the paddock areas proposed for plots 4 and 5).

31. Other matters were, of course, raised, but those were the essential arguments in relation to the significance of the LOD line.

32. That was the position at the hearing. It was agreed that if the EMRP was revoked after the hearing, but before the decision was made, the parties could engage in an exchange of written representations to assist the Inspector in her consideration of the Development Plan. The EMRP was indeed revoked by the Secretary of State on 12 April 2013 and on 11 April the Planning Inspectorate wrote to the Claimant's planning agents inviting them to consider the effect that the announcement of the revocation might have on their case.

33. In a written submission dated 18 April 2013 the Claimant's solicitors made certain submissions which were accompanied by various supporting documents including extracts from the Scoping Consultation document (published in March 2013) referred to above (see paragraphs 21-27). The LPA did not make any submissions.

34. The following paragraphs in the Claimant's written submission indicate the way in which the issue of the LOD was dealt with:

> "2.3 In respect of Housing Requirements and Distribution across the District, the local planning authority recognises that following the revocation of the EMRP, a fresh, objective assessment of housing need in the District is required. The local planning authority have commissioned consultants, G L Hearn to carry out such an assessment using up to date demographic data. The results of this assessment were

considered on 10th April 2013 by the Local Planning Authority's Executive Advisory Panel …

…

2.5 Furthermore in respect of "Refreshing the approach to Limits to Development" the local planning authority:

2.5.1 acknowledges that the limits to development are generally "… increasingly out of date …"; and

2.5.2 acknowledges that attempting to utilise 'limits to development' as a forward-planning tool would be "… not practicable, and would not safeguard them against becoming increasingly outdated again";

2.5.3 proposes "… a new approach … to allow for as more flexible response to applications to develop sites on the edges of our settlements …"; and

2.5.4 proposes that such a new approach "… means that it will no longer be possible to draw a line around … existing built up area".

> The local planning authority's proposed general approach towards the development plan in the "post EMRP world" therefore accord with the specific case made by the Appellant in respect of the irrelevance of the LOD to the determination of the Appeal.

…

3.1 In the 'post EMRP world' it is clear that the Appeal Proposal:

…

3.1.2 is in accordance – in respect of the only issue which gave rise to the remaining reason for refusal i.e. the 'limits of development' – with the local planning authority's own published proposal to abandon any use of such 'limits' as a policy tool for decision-taking on planning applications in the future; and

3.1.3 the Core Strategy is also out of date in respect of five year housing land supply …

…

> 3.2 The position in respect of the 'development plan' after the revocation of the EMRP is therefore that:
>
> 3.2.1 not only do key features of the Appeal Proposal remain as much in accordance with relevant 'development plan' policy as they were whilst in remained part of the plan; but
>
> 3.2.2 in fact the published *general* approach of the local planning authority itself towards further plan-making entirely vindicates the *specific* approach of the Appellant towards the 'limits of development' issue in the Appeal Statement and at the hearing.
>
> In the Appeal Statement we suggested that the LOD were of no practical planning assistance for decision-making on the Appeal and we believe that they can now be discounted in all the circumstances.
>
> 3.3 Insofar as the merits of the Appeal Proposal appear – in the 'post EMRP world' – to be as strong or indeed stronger than before, we respectfully invite the Inspector to grant planning permission accordingly."

35. That, therefore, was the additional material before the Inspector before she issued her decision letter on 8 May. It would seem clear that she had those representations for at least two working weeks before that letter was issued.

36. There can be no doubt that she received the document because she refers to it specifically at paragraph 3 of the decision letter in the following terms:

> "Since the Hearing the Government has revoked the East Midlands Regional Plan and so it no longer comprises part of the Development Plan. The main parties were asked for any comments on that revocation. *I have taken the representation made by the Appellant into account in determining this appeal*." (Emphasis added.)

37. For reasons to which I will now turn, Mr Jones contends that she did not engage at all with the arguments concerning the relevance (or, as he would put it, the lack of relevance) of the LOD contained in the further representations from the Claimant's solicitors.

The Inspector's decision letter

38. I will turn to Mr Jones' submissions after identifying the basis for the Inspector's decision.

39. She identified the main issue as follows:

> "Having considered all the evidence, I consider the main issue to be the effect on the character and appearance of the area,

> having regard to the location of the development within the Tur Langton Conservation Area and within the countryside."

40. She then identified the policies she considered relevant in paragraph 6 as follows:

> "The development plan now comprises the Harborough Core Strategy (CS) and the saved policies of the Harborough District Local Plan (LP). CS policy CS2 identifies where the overall housing provision in the District to 2028 will be distributed. Most development will take place in Market Harborough, Lutterworth, Broughton Astley, rural centres and selected rural villages."

41. She then amplified her appraisal of those policies:

> "8. CS policy CS17 identifies that in the countryside and in settlements not identified as selected rural settlements, new development will be strictly controlled. Where there are identified limits of development, they may be suitable to receive very limited small scale development. The development would not be consistent with that restraint policy.
>
> 9. It is not a selected rural centre which is to expect much growth. Although the Core Strategy was adopted before the publication of the National Planning Policy Framework (the Framework), the settlement hierarchy seems consistent with the aspirations of the Framework to minimise journey lengths for employment, leisure, education and other activities.
>
> 10. The defined limits of development of Tur Langton are annotated on the Proposals Map. CS policy CS2 specifies that limits of development will be reviewed through the Allocations DPD in order for the scale of new housing development envisaged to be accommodated. That has not taken place to date but is unlikely to result in much change because of the CS settlement hierarchy."

42. She then referred to the "boundary" of the LOD as follows at paragraph 11:

> "The boundary runs through the curtilage of the former public house. No evidence was put forward that justified the delineation of that boundary, but there is also no indication that this was unintentional on the part of the Council. *I acknowledge that the Council may review or change their approach to settlement limits in due course, but it has not done so yet.* There is no reason why the boundary should be regular and link across from Stone Hill through to dwellings much further south." (Emphasis added.)

43. She then focused on the proposed development and made comparisons with the "fall-back" schemes:

"12. Three of the dwellings, along with substantial detached garages would be located fully outside of the limit of development as defined on the Proposals Map. The plot 4 dwelling would be mostly inside the boundary.

13. The area was overgrown on the date of my site visit and although stated as former pub garden and car park, I have little evidence to suggest that the land was intensively used. Much of it appears to have been garden area, albeit identified in representations as within the curtilage of the public house.

14. There are several instances in Tur Langton where the boundary runs through curtilages and this is consistent with the approach of strictly limiting the amount of development in the village. The edge of the village merges in many places in paddocks and large gardens into the countryside. There are also significant areas of land within the settlement defined as important open areas on the Proposals Map, to which LP policy HS/9 applies, affording them protection.

15. The three detached dwellings would be substantial in size and would bring development much closer to the boundary hedge at the rear of the site. Instead of having a soft entrance of paddocks close to the public footpath, with the backs of dwellings being close in to the existing historic settlement, the dwellings would be on the raised land at the rear of the site. This would add to the rather unsympathetic development at the rear of Shangton House. This scheme can be distinguished from those properties because they were sited where there were previously buildings.

16. The hedgerows could be retained and improved, and permitted development rights could be restricted. Nonetheless, the extension of residential gardens and household paraphernalia within gardens would significantly alter the rural feel of the outskirts of this part of Tur Langton when viewed from the neighbouring public footpath and Stone Hill. Whilst acknowledging that the land has no particularly special landscape characteristics and is overgrown, this does not negate the need to pay attention to its rural context.

17. The appeal scheme would result in a less efficient use of land than the extant scheme. Although the two extant permissions both have dwellings that would straddle the limit of development and would include the land outside the boundary as garden or as paddocks, the position of the dwellings in the appeal scheme would be substantially further out of the settlement than the fall back positions that could both be implemented. This would not respect the rural context and would be contrary to CS policy CS11."

44. She then reflected on the 5-year supply housing land supply, to the Claimant's argument that there is a "slight shortfall of some 47 dwellings" and then concludes her reasoning in the following paragraphs:

> "22. However, I have insufficient evidence about the disputed housing shortfall to be able to conclude definitively that it exists and that because of it the housing policies should be considered out of date. Even if there were to be a proven shortfall, and attributing significant weight to the Government's growth agenda, the appeal proposal would deliver one less dwelling than would be achieved under an extant planning permission on less land. There is insufficient evidence to suggest that the other scheme for more dwellings would be undeliverable.
>
> 23. The Tur Langton Conservation Area boundary was reviewed in 2005 and was extended to include four additional areas, including land within the application site included within the mature boundary hedge. However the limit of development is not the same as the limit of the Conservation Area. If it were to be then there could be very substantially more housing provided in the locality, including on substantial areas of land to the south of Main Street. This would not be consistent with the thrust of the CS.
>
> 24. The significance of the Conservation Area is set out in the Conservation Area Character Statement. It identifies the loosely spaced buildings along Main Street, and the loose linear development along its T shape of roads. The Council has not asserted that the development would harm the significance of the designated heritage asset, which includes the adjacent grade II listed Fernie House and Shangton House which are also heritage assets in their own right. The development would not have a significant effect on the character or appearance of Main Street or the Shangton Road frontage. Conditions could control materials and require the submission of details of chimneys.
>
> 25. These conclusions in respect of the Conservation Area do not take away from the more general concerns about development outside the limits of development in the countryside which would set a precedent that could be repeated often on the edges of Tur Langton.
>
> 26. For the reasons given above, and having considered all other matters, I conclude that the appeal should be dismissed."

The Claimant's arguments and the Defendant's response

45. The first issue is whether the Inspector did engage (or, as Mr Jones put it, "grapple") with the Claimant's solicitors' submissions concerning the implications of the Scoping Consultation document. In his Skeleton Argument Mr Jones contended that

those submissions pointed out "that the new approach was towards *the wholesale abandonment of any limits of development as a tool of development control* anywhere within the Harborough District (not just a specific and site by site review of the particular existing limits through an Allocations DPD)" and that all the Inspector did was to speculate "upon a review of the LOD under the historic approach which she thought was unlikely to result in a change to the development limit boundary in this case." By the "historic approach" he means the approach to the LOD under Policy CS2 (see paragraph 19 above). He submits that the Claimant's development proposals have been rejected on the basis of a consideration that the LPA has publicly acknowledged to be out-of-date "without any reasoning given on the part of the Inspector as to why that should be so".

46. Mr Jones is entitled to say that the Inspector did not acknowledge expressly either the existence of the Scoping Consultation Document, its terms or the terms of the written submissions made on behalf of the Claimant. However, if she read the document, as she said she did (see paragraph 36 above), it is inconceivable that she was not aware of the thrust of what was being said on the Claimant's behalf. Indeed, the first main point made by Miss Blackmore in response is that the Inspector clearly said that she had considered the submissions made. Mr Jones seeks to characterise that as a "thoroughly bad point" because the Inspector only identified the revocation of the EMRP as the matter that generated the need for further comments by the parties and went on to say that she had "taken the representation made by the appellant into account in determining" the appeal.

47. I do not consider that Mr Jones' argument on that issue is a good one – it is derived from too narrow a textual analysis of the relevant paragraph in the Inspector's decision letter. It was indeed the revocation of the EMRP that gave rise to the possibility of the further representations, but by the time of the revocation of the EMRP the Scoping Consultation document had also emerged and, as I have indicated, formed the subject of a substantial part of the further submissions made by the Claimant. When a senior and experienced Inspector (as this Inspector is) says that he or she has read a document, it can safely be assumed that the document has indeed been read and understood (cf. *Wainhomes (South West) Holdings Ltd v SSCLG* **[**2013] EWHC 597 (Admin)). It follows that if and to the extent that it is contended that the Inspector either ignored the passages which went beyond the implications of the revocation of the EMRP or failed to see their potential significance, I reject the contention.

48. Miss Blackmore has drawn attention also to the sentence in paragraph 11 of the decision letter (quoted in paragraph 42 above) that I have italicised. She says that it demonstrates that the Inspector plainly had in mind the possibility of changes in the LPA's approach to the LOD issue. Mr Jones says that the language of this sentence is redolent of the language of Policy CS2 (see paragraph 19 above) by using the word "review". I agree that that word might suggest that it was Policy CS2 that was in the Inspector's mind at that point, but the possibility of a change in approach (as opposed to a "review") would only have been generated by the terms of the Scoping Consultation document itself. That suggests that that part of what the Inspector said was referable to the implications of the Scoping Consultation document.

49. I am, therefore, entirely satisfied that the Inspector was aware of the Scoping Consultation document and the arguments concerning its implications advanced by

the Claimant which, in her view, she felt she had dealt with adequately in that sentence. That conclusion does not, of course, necessarily answer the question of whether the decision letter did indeed deal adequately with the issues thus raised. That is the issue to which I now turn.

50. Relying in part on *Kissel v Secretary of State for the Environment*, The Times, 22 July 1993, CO/1856/92, Mr Jones submits that express reference to the LPA's current attitude to the LOD issue was required in the decision letter. In the *Kissel* case the Inspector, who was dealing with an appeal on the basis of written representations, did not refer in his decision letter to an emerging local plan a consultative draft of which existed which contained a particular policy (relevant to the planning application under appeal) that, in the view of officers, would not appear in the final plan. That view had been communicated to the Inspector. The removal of the particular policy would have supported the appellant's case. In quashing the decision, Sir Graham Eyre QC, sitting as a Deputy High Court Judge, said this:

> "In the circumstances of this particular case, it seems to me, that the Inspector should have recognised in his decision letter, the existence of the plan notwithstanding its very early stage and to have indicated the extent to which it influenced his decision one way or the other. It would come as no surprise if, in fact, having looked at it and having regard to the reservations and the qualifications being made in respect of it he had chosen to ignore it but he makes no reference to it at all. The only reference to policy is a reference to a non-statutory document which is the Chipping Campden Planning Policy of late 1985. He found as a fact that that was still up-to-date and relevant as supplementary planning guidance as it appears to be."

51. He continued thus later in his judgment:

> "I emphasise that the Inspector was perfectly entitled to place reliance on the 1985 policy notwithstanding its non-statutory status. However, having regard to the fact that a draft statutory plan was emerging, albeit at a very early stage, and specific reference had been made to it in the representations and, further, that the matter had been dealt with in post-written representation correspondence the Inspector should have dealt with it in some way that demonstrated that he was aware of its existence. It should have attracted some comment and in the absence of his recognition that the plan existed there is room for doubt as to the extent to which he took it into account as a potential material consideration. It is that matter which, in my judgment, vitiates his decision …."

52. It is apparent in the *Kissel* case that there was not even oblique reference by the Inspector to the emerging policy. However, in the present case, if my analysis of the sentence in paragraph 11 of the decision letter is correct (see paragraph 48 above), the Inspector made at least oblique (and arguably direct) reference to the potential effect of the LPA's then thinking on LODs. It might, with hindsight, have been wiser to add a sentence or two saying a little more about it, but I do not think that the Inspector's

approach (which, in my judgment, can be discerned even from the one sentence to which I have referred) can be criticised.

53. What she said was that that the LPA "may … change [its] approach to settlement limits in due course, but it has not done so yet". This expresses in a nutshell the situation that confronted her at the time of the decision letter. In the first place, I think it overstates the then position to say, as Mr Jones submits, that the future policy was such "that it will no longer be possible to draw a line around all of the allocated sites and existing built up area" and that there was, as a matter of current fact, a "Finding of Out-datedness" in relation to the LOD. All that could be said at that stage was that this was a provisionally expressed planning policy intention about the relevance of which to a new draft local plan a Scoping Consultation was taking place. The timetable was set out in the document and described in the paragraph quoted in paragraph 24 above.

54. The suggestion that significant weight could be given to what undoubtedly was a statement of planning intention by the LPA within less than a couple of months of the issue of the Scoping Consultation document, before any responses to it had been given and evaluated, before the publication of the draft Plan itself and well before the Examination in Public, seems to me to be somewhat far-fetched. However, the short point for present purposes is that it was for the Inspector to judge what weight to give to the expression of intention in the Scoping Consultation document, that such judgment is a matter of "planning judgment" and that it is not for the court to substitute any alternative view (unless the judgment is "perverse"): see, e.g., *Tesco Stores Ltd v. Secretary of State for the Environment* [1995] 1 WLR 759, at p. 780H, *per* Lord Hoffmann, and *Newsmith v. Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74 (Admin), *per* Sullivan J, as he then was, at [6].

55. Whilst it is right that she did not say expressly that she considered it too early to give the potentially emerging policy any weight, or any sufficient weight to outweigh other considerations, it seems to me plain that this is what she was conveying in the sentence to which I have referred.

56. Was that articulation of her view sufficient? I will not quote the well-known passage from the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter (No 2)* [2004] 1 WLR 1953, but it seems to me that, bearing in mind that the decision letter was addressed to "parties who [were] well aware of all the issues involved" (see *Seddon Properties v. Secretary of State for the Environment* (1981) 42 P. & C. R. 26 at p. 28), the short reason given for not attaching any or any significant weight to the potentially emerging policy must be seen as "intelligible and … adequate".

57. There is nothing wrong (and indeed everything right) with brevity in this context provided that it conveys to the informed reader the gist of the reasoning leading to the particular conclusion. In my judgment, taking the sentence as it stands in the context of the whole decision letter, including the Inspector's positive assertion that she had taken into account the additional submissions submitted on the Claimant's behalf, the letter meets the requirements summarised in the *South Bucks* case in relation to the implications of the Scoping Consultation document.

58. I will turn now to the other grounds of challenge to the Inspector's decision advanced by Mr Jones.

A failure to apply the NPPF

59. It is asserted that Inspector did not apply or have regard to paragraph 14 of the NPPF (see paragraph 15 above) as a material planning consideration and misunderstood paragraph 49 of the NPPF. Paragraph 49 reads as follows:

> "Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

60. It is not disputed that the Inspector did have regard to the NPPF: paragraphs 9 and 18 – 22 of the decision letter are all directly referable to the implications of the NPPF. As I understand the argument, it is to the effect that the Inspector was wrong to conclude that the contents of the Development Plan were "up-to-date" merely because a 5-year supply of housing land could be demonstrated – or at least that the alleged shortfall could not be demonstrated. Mr Jones submits that this is not what paragraph 49 of the NPPF says and, using my words rather than his, adopting the Inspector's approach neutralises the impact of the presumption in favour of sustainable development emphasised in paragraph 14. He contends that the Development Plan could not been seen as up-to-date because (i) so far as the Conservation Area was concerned, its boundaries were set in 1975 and was extended to include the whole of the public house site in 2005/6 with the result that the LOD line cut arbitrarily across the site, (ii) the fall-back position had authorised development outside the LOD and (iii) the view of the LPA that the LOD was no longer to be regarded as a development control tool. He submits, against that background, that the Inspector should have concluded that Policy CS2 was out-of-date and the application of paragraph 14 of the NPPF should have led to the allowing of the appeal or the giving of intelligible reasons for its dismissal.

61. I am not able to accept these arguments. The inter-relationship between paragraph 49 and paragraph 14 of the NPPF will depend upon the circumstances of the individual planning application judged by reference to the local planning context as it relates to the NPPF. A demonstrable lack of a 5-year supply of housing land might well demand the more forceful application of the presumption referred to in paragraph 14, whereas an alleged shortfall that cannot be demonstrated will not necessarily neutralise the application of that paragraph, but will demand less of an emphasis upon it depending on other material considerations. But whether that analysis is or is not correct, what the Inspector decided here was that the 5-year supply of housing land was demonstrated (or at least the converse was not demonstrated) and that, accordingly, she was entitled (and indeed obliged) to give some weight to the existing policies (including Policy CS2) which, though susceptible to change in due course, were not far along the path of change. It was for her to give such weight to this as she thought fit and it is not for the court to interfere with that assessment. It is, though, to be noted that she made what might be thought to be a perceptive comment in paragraph 22 of the decision letter to the effect that "even if there were to be a proven shortfall, and attributing significant weight to the Government's growth agenda, the

appeal proposal would deliver one less dwelling than under an extant planning permission on less land." Whilst, of course, the lesser area of land did involve some encroachment beyond the LOD, it was nothing like the encroachment involved in the present proposal. What she was saying was that even if it was right to give greater weight to the presumption in paragraph 14 of the NPPF because of a demonstrated lack of a 5-year supply of housing land, the appeal proposal met the presumption less well than what was permitted under an existing planning permission on a smaller area of land that encroached less on the countryside. Mr Jones says that the latest extant proposal was for 5 dwellings whereas the current proposal was for 7 dwellings. That may be so, but it cannot be ignored was that another extant proposal was for 8 dwellings - indeed one further argument of Mr Jones, to which I will refer in paragraphs 72-77 below, is that the Inspector was wrong in either ignoring it or according it insufficient weight in assessing the current proposal.

62. As it seems to me, the Inspector's approach on this issue was articulated intelligibly in the decision letter and cannot further be criticised as an exercise in planning judgment.

The precedent issue

63. Mr Jones challenges the conclusion reached by the Inspector in paragraph 25 of the decision letter (see paragraph 44 above). Relying on the approach of Mr David Widdicombe QC, sitting as a Deputy High Court Judge, in *Poundstretcher Limited v SSE* (1998) 3 PLR 69 (at 74F) that "mere fear or generalised concern is not enough" and that "[there] must be evidence in one form or another for the reliance on precedent", he contends that there was no rational evidence to support a conclusion that the grant of planning permission would create a precedent and that it was not a material planning consideration in respect of the appeal proposal. He also submits also that the planning history and status of the site, taken with the effect of the fall-back positions, were not replicated elsewhere in Tur Langton.

64. In my judgment, Miss Blackmore is right to say that there was evidence upon which the Inspector could conclude that granting permission could set a precedent in Tur Langton. The Inspector (who, of course, paid a site visit and who plainly also took account of the whole setting of Tur Langton) said at paragraph 14 of the decision letter that several instances in Tur Langton where the LOD "runs through curtilages and this is consistent with the approach of strictly limiting the amount of development in the village" and she notes that "[the] edge of the village merges in many places in paddocks and large gardens into the countryside." There was, therefore, clear evidence available to her that the fringes of the settlement could be vulnerable to development pressures if the appeal was allowed.

65. Whilst it is not evident that this consideration was determinative, it was a consideration that was material and it was for the Inspector to give it such weight as she thought appropriate.

66. I do not consider that this ground of challenge can be sustained.

The "character and appearance of the area" issue

67. The Claimant contends that the Inspector adopted an inconsistent and/or an incoherent approach towards the effect of the proposed development of on the character and appearance of the village as part of the Conservation Area on the one hand and its effect upon the character or appearance of the village on the other hand. It is also contended that she adopted an irrational/*Wednesbury* unreasonable approach towards assessing the effect of the development on the character or appearance of the area.

68. As already noted (see paragraph 8 above), almost the whole of Tur Langton is within a single Conservation Area and Mr Jones submits that the "character or appearance" of the village does not change depending upon whether it is considered as a Conservation Area or not.

69. The foundation for this argument within the decision letter is contained in paragraphs 24 and 25 of the letter (quoted at paragraph 44 above). As I understand the argument, it is to the effect that since the preservation or enhancement of the Conservation Area is something to which "considerable importance and weight" should be attached (see *Bath Society v Secretary of State for the Environment* [1991] 1 WLR 1303, *per* Glidewell LJ at 1318F), but that there would be no harm to the Conservation Area as such, it was inconsistent and/or irrational (in other words, it was illogical) to conclude that the "rural feel" of the village (see paragraph 16 of the decision letter) would be compromised by the proposal.

70. With respect, I fail to understand the logic of this argument. It is quite possible for a planning proposal in a rural village or hamlet to be in keeping with the requirements of the Conservation Area to which it is subject as designated in its Character Statement (see paragraph 8 above) whilst at the same time compromising its essential rural character. The two aspects are, as Miss Blackmore submits, different or at least are capable of being different. The Inspector here had obtained a good sense of what Tur Langton was like and she gave meaning to that in her decision letter.

71. Again, I do not consider this criticism can be sustained.

Inadequate consideration of the fall-back positions

72. This argument is put in a number of ways, but in essence what is said is that what could be done under the extant planning permissions (and indeed pursuant to the established lawful use as a public house) was not accorded the "vitally material" status that it deserved: see *Spackman v SoSE* [1977] 1 AER 25. Equally, the Inspector did not, as it is suggested she should, approach the issue on the basis of the approach in *PF Ahern* (*London*) *Ltd v Secretary of State for the Environment* [1998] JPL 351. I should set out in full the relevant paragraph from the judgment of Mr Christopher Lockhart-Mummery QC, sitting as a Deputy High Court Judge:

> "The requirement to have regard to the consideration imports a requirement on the decision-maker to have before it sufficient material so that the consideration can be assessed. In the context of fall-back cases this all reduces to the need to ask and answer the question: *is the proposed development in its implications for impact on the environment, or other relevant planning factors, likely to have implications worse than, or broadly similar to, any use to which the site would or might be*

> *put if the proposed development were refused?* By "might" I do not mean a mere theoretical possibility which could hardly feature in the balance …. For a fall-back suggestion to be relevant there must be a finding of an actually intended use as opposed to a mere legal or theoretical entitlement. Beyond these general statements, which are ones of simple common sense, I suggest that the court should be wary of laying down detailed hoops for the decision-maker in his, or her, broad powers and duties under section 70(2), especially bearing in mind that there will doubtless be many other factors relevant to the eventual decision." (Emphasis added.)

73. The highlighted passage is the passage referred to specifically by Mr Jones.

74. Mr Jones criticises the Inspector for not identifying the "fall-back" positions, or indeed any of them, as a main issue or as material to her decision. He says there is no reference to "fall-back positions" of any kind until paragraph 17 of the decision letter (quoted at paragraph 43 above) and even then no distinction is made between any of them. The only other reference to any fall-back positions at all is that in paragraph 22 (quoted in paragraph 44 above).

75. For my part, I do not see the failure specifically to identify each fall-back position in the decision letter is a matter for criticism. For reasons already given (see paragraph 56 above), the decision letter was addressed to informed readers who knew what the issues were. There was in truth no suggestion made by anyone that the site would be resurrected for use as a public house and that position seems to me to have been in the "theoretical" realm referred to in *Ahern* and understandably not referred to by the Inspector. She did, however, reflect on the apparently different use for the land to the east of the LOD under the current proposals from its not very intensive use when the public house functioned: see paragraph 13 of the decision letter (quoted in paragraph 43 above).

76. So far as *Spackman* is concerned, it is clear that in that case that the existence of a pre-existing planning permission was "a vitally material consideration for the inspector to take into account" in assessing the appeal before him. I do not, of course, suggest that the factor would not be material in most, if not all, cases, but the weight to be accorded to it will inevitably vary according to the circumstances and it is, as Miss Blackmore says, how the fall-back position or positions impact on the "main issue" in the appeal that is important. So far as *Ahern* is concerned, whilst the considerations referred to in the highlighted passage represent important considerations and the passage itself a useful reference point on these issues, it is, to my mind, over-stating things to describe it as a "test" that must be applied in every such case. I do not, with respect, think that Mr Widdicombe QC was suggesting that it should be so treated.

77. In my judgment, the Inspector did, in a style characterised by acceptable brevity, highlight the point or points of the relevance of the fall-back positions to the issue she had to determine and, furthermore, the weight she gave to these matters is apparent from the way she expressed herself. That, it seems to me, is all that she was required to do and the weight she gave these matters was a matter for her.

Failure to consider a "split decision"

78. The Inspector is criticised for not granting planning permission for the part of the development that was within or substantially within the LOD line, for not considering whether or not to grant planning permission for that part of the development and for giving "no or no adequate or intelligible reasons for not granting planning permission for that part of the development"**.**

79. There is no dispute that an Inspector can, of his or her own motion, grant a different permission from that which is the subject of the appeal: see, e.g., *Granada Hospitality Limited v Secretary of State for the Environment, Transport and the Regions* [2001] 81 P&CR 36 and *R (Coronation Power Limited) v SSCLG* [2011] EWHC 2216 (Admin). However, for obvious reasons, it is a process that requires careful consideration: see *Johnson v Secretary of State for the Communities* [2007] EWHC (Admin) and cf. *Tapecrown Ltd v First Secretary of State* [2006] EWCA Civ 1744, at paragraph 46.

80. To my mind, the short point in this case is that the Claimant was represented before the Inspector by an experienced Planning Consultant and an experienced solicitor with substantial planning expertise, supported by a lengthy appeal statement. At no stage then (or in the subsequent submissions) did anyone invite the Inspector's attention to the possibility of a split decision. That is quite sufficient from my point of view to characterise this criticism as wholly without substance.

Failure to consider the grant of permission subject to conditions

81. The same considerations as those applying to my view of the "split decision" criticism (see paragraph 80 above) apply to this criticism. No-one raised this issue and, as has been said, it is not for an Inspector to "cast about for conditions not suggested before him": see *Top Deck Holdings v SSE* [1991] JPL 961 and *R (Ayres) v SSETR* [2002] EWHC 295 (Admin).

82. However, Miss Blackmore is correct to say that there is clear evidence in the decision letter that, notwithstanding the obligation of the parties to suggest conditions for consideration, the Inspector herself did consider whether certain conditions might be appropriate: see paragraphs 16 and 24.

83. I consider this ground unsustainable.

Conclusion

84. For the reasons I have given, I do not consider that any of the grounds of criticism of the Inspector's decision or of the decision letter are made out.

85. She determined the matter on the materials put before her, including the policies applicable at the time, giving such weight to all issues as she saw fit in accordance with her planning judgment and articulated them sufficiently fully and clearly for the experienced team representing the Claimant. If the policies have changed materially since that time then, a similar application may be dealt with differently, but that is a wholly different matter from quashing her decision on the grounds advanced.

86. I am grateful to Mr Jones and Miss Blackmore for their assistance.

APPENDIX 1


hangton Road
West-cott
The Coach House
Shangton House
x Barn
PLOT 5
PLOT 6
PLOT 7
PLOT 4
PLOT 3
PLOT 2
PLOT 1
GP
121.0m
Fernie House
Mount Pleasant

APPENDIX 2


Shangton Road
West-cott
The Coach House
Shangton House
Mount Pleasant
N

APPENDIX 3


Shangton Road
West-cott
The Coach House
Shangton House
PADDOCK AREA TO PLOT 5
PADDOCK AREA TO PLOT 4
GP
121.0m
Fernie House
Mount Pleasent
N