Neutral Citation Number: [2019] EWHC 3158 (Admin)

Case No: CO/1470/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 November 2019

Before :

MRS JUSTICE LANG DBE

- -

Between :

WOKINGHAM BOROUGH COUNCIL	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	**Defendants**
(2) TAYLOR WIMPEY UK LIMITED	
(1) DARRELL JOHN BEASLEY	**Interested Parties**
(2) BEVERLEY ANNE BEASLEY	

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Cain Ormondroyd and **Horatio Waller** (instructed by **Select Business Services: Legal Solutions**) for the **Claimant**
Jacqueline Lean (instructed by the **Government Legal Department**) for the **First Defendant**
Morag Ellis QC (instructed by **Eversheds Sutherland**) for the **Second Defendant**
The **Interested Parties** did not appear and were not represented

Hearing date: 6 November 2019

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Approved Judgment

Mrs Justice Lang :

1. The Claimant applies under section 288 of the Town and Country Planning Act 1990 ("the TCPA 1990") to quash the decision of the First Defendant, dated 28 February 2019, in which his Inspector allowed an appeal by the Second Defendant and granted planning permission for residential development on land at Parklands, east of Basingstoke Road, Spencers Wood, Wokingham ("the Site").

2. The issue in the claim was whether the Inspector erred in not affording full weight to the conflict between the proposed development and policies CP9, CP11 and CC02 in the development plan, which restricted development outside settlement limits.

3. Permission was given on the papers by Mr John Howell QC, sitting as a Deputy High Court Judge, on 17 May 2019.

Planning history

4. The Site is primarily an area of open pasture land which lies between the villages of Three Mile Cross and Spencers Wood. It adjoins the eastern frontage of Basingstoke Road.

5. The Second Defendant applied for outline planning permission for up to 55 dwellings (with 35% affordable housing), together with all associated parking, landscape and access, and 1.56 ha of Suitable Alternative Natural Greenspace ("SANG"). The proposed development consisted of two areas of residential development, adjoining each village, with a SANG in between.

6. The Second Defendant appealed under section 78 TCPA 1990 against the Claimant's failure to give notice of its decision within the prescribed period.

7. The Claimant relied upon six putative reasons for refusal of permission. Following an agreement under section 106 TCPA 1990, by the date of the Inquiry, only two putative reasons remained, which related to landscape and design.

8. The Inspector (Mr Nick Palmer BA (Hons) BPI MRTPI) held an Inquiry between 8 and 11 January 2019, and attended a Site visit on 11 January 2019.

9. The Inspector's conclusions were set out in his Decision Letter ("DL"), as follows:

> "**Overall**
>
> 51. I have found that the proposal, including the mitigation measures, would not adversely affect the integrity of the SPA. On this basis the presumption in favour of sustainable development applies. I note that Policy CC01 of the LP has similar wording to the previous Framework in terms of the presumption, which has now been superseded.
>
> 52. The parties agree that the housing numbers set out in Policy CP17 of the CS are out-of-date as they were based on the South East Plan which has been revoked. Where strategic policies are

more than 5 years old, as is the case here, the Framework requires that local housing need is calculated using the standard methodology. Using the 2014-based household projections the housing need for the period 2018 to 2023 is 4,320 dwellings, including a 5% buffer. This would require delivery of 907.2 dwellings per annum (dpa). This delivery rate significantly exceeds that which is specified in Policy CP17 at 723 dpa. There is a 6.83 years' supply of deliverable housing sites and paragraph 11 (d) of the Framework is not engaged on the basis of housing land supply.

53. Part of this supply has, however been achieved by using land outside the development limits. In the Lambs Lane appeal [APP/X0360/W/18/3199728] the Inspector noted the use of land outside development limits in achieving the housing land supply and considered that this could reduce the weight to be given to those limits. Nonetheless she concluded that this did not support attributing the aims of the policies limited weight.

54. In the Stanbury House appeal [APP/X0360/W/15/3097721], the parties had agreed the annual rate to deliver the objectively assessed need to be 876 dpa. The Inspector gave limited weight to the development boundaries on the basis that they were derived from Policy CP17. The housing need of over 907 dpa is higher still than the figure used in that appeal.

55. I take the view that the development limits are out-of-date because they are based on an outdated housing requirement, but that the aims of Policies CP11, CP9 and CC02 are generally consistent with national policy. It is important to look at the underlying aims of those policies in deciding the weight to be given to the conflict with them. Those aims are to protect the identities of separate settlements, to maintain the quality of the environment and to locate development where there is good accessibility to services and facilities. For the reasons given above, the proposal would maintain the separation of the settlements and their separate identities. There would be a high degree of accessibility to services and facilities. Although there would be limited harm to the character and appearance of the area, the SANG would be designed to maintain the quality of the environment. For these reasons the proposal would be in accordance with the underlying aims of the policies to a significant extent.

56. Because the development limits are out-of-date, Policies CP11, CP9 and CC02 are not fully up-to-date. This does not mean, however that those policies are out-of-date such that the tilted balance in paragraph 11 (d) of the Framework would be engaged. Nonetheless because the policies are not fully up-to-date the conflict with them does not attract full weight. I also take into account the significant degree of consistency between

> the proposal and their underlying aims. Having regard to all of these factors I give significant weight to the policy conflict. I have also given great weight to the harm to the setting of the listed building and moderate weight to the harm to the character and appearance of the area.
>
> 57. On the other hand, I have given substantial weight to the benefit of the SANG. I also give significant weights to the benefits of the affordable housing, the accessible location and to the enhancement to the setting of the listed building in terms of improved public access. There would also be economic benefits arising from the construction of the development and from the expenditure of its residents and I give further limited weight in this regard. The improvement to the footpath linking to Oakbank School would primarily be required to address the needs of the development but would also be of wider benefit. The planting within the SANG would aim for biodiversity gain. I give further limited weights to these benefits.
>
> 58. The substantial, three significant and three limited weights that I have identified in favour of the proposal would be enough to outweigh the great, significant and moderate weights that I attach to the harms and policy conflicts. The material considerations are of enough weight to indicate that my decision should be otherwise than in accordance with the development plan. This balancing exercise demonstrates that the benefits would outweigh the impacts and the proposal would accord with Policy 1 of the NP in this respect."

Grounds of challenge

10. The Claimant submitted that the Inspector erred in law by affording 'significant' rather than 'full' weight to the conflict between the proposed development and policies CP9, CP11 and CC02 in the development plan, which restrict development outside settlement limits.

11. In particular, the Claimant submitted that:

    i) The Inspector failed to give adequate reasons for his conclusion.

    ii) If the Inspector's reason for his conclusion was simply that the housing requirements in CP17 were out-of-date, he took into account an immaterial consideration and/or his conclusion was irrational.

    iii) The Inspector failed to have regard to a material consideration, namely, whether or not the development limits were preventing the Council from complying with national policy on the five year housing land supply.

    iv) The Inspector acted unfairly in relying upon the fact that some of the sites in the Council's five year housing land supply fell outside settlement boundaries,

without requesting evidence and/or submissions on this matter from the Council.

12. The First and Second Defendants resisted the Claimant's challenge, submitting that the weight to be accorded to policies CP9, CP11 and CC02, and the wider balancing exercise, were quintessentially matters of planning judgment for the Inspector. There was no proper basis for interfering with the Inspector's exercise of planning judgment in this case.

13. In particular, the Defendants submitted:

    i) The reasons were intelligible and adequate, when read fairly as part of the decision as a whole.

    ii) The undisputed evidence was that the development limits were set by reference to the out-of-date housing requirements in CP17. This was a material consideration and it was rational for the Inspector to have regard to it. On a fair reading of the decision, the Inspector did not reach his conclusion simply on the basis that CP17 was out-of-date.

    iii) The Inspector was well aware of the evidence in respect of the Claimant's housing land supply, and the Claimant's submission at the Inquiry that this was "a powerful material consideration pointing to the giving of full weight to the settlement boundary policies" (paragraph 50 of the Claimant's closing submissions). It did not follow that the Inspector was therefore required to conclude that the conflict with the policies should be given full weight. It was no part of the Inspector's role to consider whether the development limits in the development plan were appropriate – that was a matter for consideration on examination of the emerging Local Plan.

    iv) The Claimant must have been aware that the extent to which development had occurred outside settlement limits was potentially relevant, in the light of the previous inspector's decision in Lambs Lane which was part of the evidence at the Inquiry. The Claimant adduced evidence on this point, and both parties made submissions on it. The Claimant was given a fair opportunity to address this matter.

Legal and policy framework

14. The parties relied upon the "seven familiar principles" set out by Lindblom J. in *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin), at [19].

(i) Applications under section 288 TCPA 1990

15. Under section 288 TCPA 1990, a person aggrieved may apply to quash a decision on the grounds that (a) it is not within the powers of the Act; or (b) any of the relevant requirements have not been complied with, and in consequence, the interests of the applicant have been substantially prejudiced.

16. The general principles of judicial review are applicable to a challenge under section 288 TCPA 1990. Thus, the Claimant must establish that the Secretary of State misdirected himself in law or acted irrationally or failed to have regard to relevant considerations or that there was some procedural impropriety.

17. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26. As Sullivan J. said in *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, at [6]:

> "An application under section 288 is not an opportunity for a review of the planning merits….."

18. In *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] 1 WLR 1865, Lord Carnwath giving the judgment of the Supreme Court warned, at paragraph 23, against over-legalisation of the planning process. At [24] to [26], he gave guidance that the courts should recognise the expertise of the specialist planning inspectors and work from the presumption that they will have understood the policy framework correctly. Inspectors are akin to expert tribunals who have been accorded primary responsibility for resolving planning disputes and the courts have cautioned against undue intervention by the courts in policy judgments within their areas of specialist competence. Recourse to the courts may sometimes be needed to resolve distinct issues of law, or to ensure consistency of interpretation in relation to specific policies. But issues of interpretation, appropriate for judicial analysis, should not be elided with issues of judgment in the application of that policy.

19. A decision letter must be read (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well-informed reader who understands the principal controversial issues in the case: see Lord Bridge in *South Lakeland v Secretary of State for the Environment* [1992] 2 AC 141, at 148G-H; Sir Thomas Bingham MR in *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263, at 271; *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26, at 28; and *South Somerset District Council v Secretary of State for the Environment* (1993) 66 P & CR 83.

20. Two citations from the authorities listed above are of particular relevance to the disputed issues in this case.

    a) *South Somerset District Council*, per Hoffmann LJ at 84:

    > "...as Forbes J. said in *City of Westminster v Haymarket Publishing Ltd*:
    >
    > > "It is no part of the court's duty to subject the decision maker to the kind of scrutiny appropriate to the determination of the meaning of a contract or a statute. Because the letter is addressed to parties who are well aware of all the issues involved and of the arguments deployed at the inquiry it is not

> necessary to rehearse every argument relating to each matter in every paragraph."

> The inspector is not writing an examination paper on current and draft development plans. The letter must be read in good faith and references to policies must be taken in the context of the general thrust of the inspector's reasoning ... Sometimes his statement of the policy may be elliptical but this does not necessarily show misunderstanding. One must look at what the inspector thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood a relevant policy or proposed alteration to policy."

b) *Clarke Homes*, per Sir Thomas Bingham MR at 271-2:

> "I hope I am not over-simplifying unduly by suggesting that the central issue in this case is whether the decision of the Secretary of State leaves room for genuine as opposed to forensic doubt as to what he has decided and why. This is an issue to be resolved as the parties agree on a straightforward down-to-earth reading of his decision letter without excessive legalism or exegetical sophistication."

21. An inspector is under a statutory duty to give reasons for his decision, pursuant to rule 19 of the Town and Country Planning Appeals (Determination by Inspectors)(Inquiries Procedure)(England) Rules 2000.

22. In *South Buckinghamshire District Council v Porter* (No 2) [2004] 1 WLR 1953, Lord Brown reviewed the authorities and gave the following guidance on the nature and extent of the inspector's duty to give reasons:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be

> read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

23. Whilst reasons may be "briefly stated", depending on the context, they must not give rise to substantial doubt as to whether the decision-maker misunderstood some relevant policy or other important matter or failed to reach a rational decision on relevant grounds. As Lord Carnwath confirmed in *Dover DC v CPRE (Kent)* [2018] 1 WLR 108, the essence of the duty is that the information provided must not leave "genuine doubt…as to what [the Inspector] has decided and why" (at [42]).

(ii) Decision-making

24. Section 70(2) TCPA 1990 provides that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") provides:

> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise."

25. In *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, [1997] 1 WLR 1447, Lord Clyde explained the effect of this provision, beginning at 1458B:

> "Section 18A [the parallel provision in Scotland] has introduced a priority to be given to the development plan in the determination of planning matters……
>
> By virtue of section 18A the development plan is no longer simply one of the material considerations. Its provisions, provided that they are relevant to the particular application, are to govern the decision unless there are material considerations which indicate that in the particular case the provisions of the plan should not be followed. If it is helpful to talk of presumptions in this field, it can be said that there is now a presumption that the development plan is to govern the decision on an application for planning permission….. Thus the priority given to the development plan is not a mere mechanical preference for it. There remains a valuable element of flexibility. If there are material considerations indicating that it should not be followed then a decision contrary to its provisions can properly be given.
>
> Moreover the section has not touched the well-established distinction in principle between those matters which are

properly within the jurisdiction of the decision-maker and those matters in which the court can properly intervene. It has introduced a requirement with which the decision-maker must comply, namely the recognition of the priority to be given to the development plan. It has thus introduced a potential ground on which the decision-maker could be faulted were he to fail to give effect to that requirement. But beyond that it still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision-maker. It is for him to assess the relative weight to be given to all the material considerations. It is for him to decide what weight is to be given to the development plan, recognising the priority to be given to it. As Glidewell J observed in *Loup v Secretary of State for the Environment* (1995) 71 P & C.R. 175, 186:

> "What section 54A does not do is to tell the decision-maker what weight to accord either to the development plan or to other material considerations."

Those matters are left to the decision-maker to determine in the light of the whole material before him both in the factual circumstances and in any guidance in policy which is relevant to the particular issues.

…..

In the practical application of section 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will be required to assess all of these and then decide whether in light of the whole plan the proposal does or does not accord with it. He will also have to identify all the other material considerations which are relevant to the application and to which he should have regard. He will then have to note which of them support the application and which of them do not, and he will have to assess the weight to be given to all of these considerations. He will have to decide whether there are considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given to it. And having weighed these considerations and determined these matters he will require to form his opinion on the disposal of the application. If he fails to

> take account of some material consideration or takes account of some consideration which is irrelevant to the application his decision will be open to challenge. But the assessment of the considerations can only be challenged on the ground that it is irrational or perverse."

26. This statement of the law was approved by the Supreme Court in *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13, [2012] P.T.S.R. 983, per Lord Reed at [17].

(iii) The Framework

27. The National Planning Policy Framework ("the Framework") is a material consideration to be taken into account when applying section 38(6) PCPA 2004 in planning decision-making, but it is policy not statute, and does not displace the statutory presumption in favour of the development plan: *Suffolk Coastal DC v Hopkins Homes Ltd* [2017] UKSC 37, per Lord Carnwath at [21].

28. Although the July 2018 edition of the Framework was still in force at the date of the Inquiry, the February 2019 edition had come into force by the date of the Inspector's decision. For the purposes of this appeal, there was no material change.

29. Paragraph 11 applies a presumption in favour of sustainable development. For decision-taking, where there are no relevant development plan policies, or the policies which are most important for determining are out-of-date, permission should be granted unless:

    i) Framework policies that protect areas or assets of particular importance provide a clear reason for refusal; or

    ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (often described as the "tilted balance").

30. Footnote 7 to paragraph 11 amplifies the term "out-of-date", stating:

> "This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1."

31. Section 5 of the Framework is headed "Delivering a sufficient supply of homes", and it begins, at paragraph 59, with its overarching objective, namely:

> "To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is

> needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay."

32. Ensuring a sufficient number and range of homes is identified as an element of the social dimension of sustainable development in paragraph 8(b) of the Framework.

33. Paragraph 73 provides:

> "73. Strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period, and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old *[Footnote 37: Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance.]*. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:
>
> > a) 5% to ensure choice and competition in the market for land; or
> >
> > b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan; or
> >
> > c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply."

34. Annex 1 to the Framework, headed "Implementation", gives guidance on out-of-date policies, at paragraph 213:

> "However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, 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)."

35. This guidance (which has essentially remained the same since 2012, despite some re-casting of the paragraphs) was considered in *Peel Investments (North) v Secretary of*

State for Communities and Local Government [2019] EWHC 2143 (Admin), per Dove J. at [58]:

> "….. there is nothing in the relevant provisions of the Framework to suggest that the expiration of a plan period requires that its policies should be treated as out-of-date…It will be a question of fact or in some cases fact and judgment. The expiration of the end date of the plan may be relevant to that exercise but it is not dispositive of it."

36. In *Gladman Developments Limited v Daventry District Council and Secretary of State for Communities and Local Government* [2016] EWCA Civ 1146, Sales LJ considered the approach to be taken to the older development plan policies in issue in the appeal, at [40] – [44]:

> "40. I would formulate the position in this way:
>
> i) Since old policies of the kind illustrated by policies HS22 and HS24 in this case are part of the development plan, the starting point, for the purposes of decision-making, remains section 38(6) of the 2004 Act. This requires that decisions must be made in accordance with the development plan — and, therefore, in accordance with those policies and any others contained in the plan — unless material considerations indicate otherwise. The mere age of a policy does not cause it to cease to be part of the development plan; see also para. 211 of the NPPF, set out above. The policy continues to be entitled to have priority given to it in the manner explained by Lord Clyde in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, HL, at 1458C-1459G.
>
> ii) The weight to be given to particular policies in a development plan, and hence the ease with which it may be possible to find that they are outweighed by other material considerations, may vary as circumstances change over time, in particular if there is a significant change in other relevant planning policies or guidance dealing with the same topic. As Lord Clyde explained:
>
> > "If the application does not accord with the development plan it will be refused unless there are material considerations indicating that it should be granted. One example of such a case may be where a particular policy in the plan can be seen to be outdated and superseded by more recent guidance" (p.1458E).
>
> iii) The NPPF and the policies it sets out may, depending on the subject-matter and context, constitute significant material considerations. Paragraph 215 sets out the

approach to be adopted in relation to old policies such as policies HS22 and HS24 in this case, and as explained above requires an assessment to be made regarding their consistency with the policies in the NPPF. The fact that a particular development plan policy may be chronologically old is, in itself, irrelevant for the purposes of assessing its consistency with policies in the NPPF.

iv) Since an important set of policies in the NPPF is to encourage plan-led decision-making in the interests of coherent and properly targeted sustainable development in a local planning authority's area (see in particular the section on Plan-making in the NPPF, at paras. 150ff), significant weight should be given to the general public interest in having plan-led planning decisions even if particular policies in a development plan might be old. There may still be a considerable benefit in directing decision-making according to a coherent set of plan policies, even though they are old, rather than having no coherent plan-led approach at all. In the present case, it is of significance that the Secretary of State himself decided to save the Local Plan policies in 2007 because he thought that continuity and coherence of approach remained important considerations pending development of appropriate up-to-date policies.

v) Paragraph 49 of the NPPF creates a special category of deemed out-of-date policies, i.e. relevant policies for the supply of housing where a local planning authority cannot demonstrate a five-year supply of deliverable housing sites. The mere fact that housing policies are not *deemed* to be out of date under para. 49 does not mean that they cannot be out of date according to the general approach referred to above.

41. In the particular circumstances of this case Mr Kimblin submitted (i) that the facts that policies HS22 and HS24 appeared in a Local Plan for the period 1991–2006, long in the past, and were tied into the Structure Plan (in particular, in relation to policy HS24, as set out in the explanatory text at para. 4.97 of the Local Plan), which is now defunct, meant that very reduced weight should be accorded to them; (ii) that the Local Plan policies in relation to housing supply, which include policies HS22 and HS24, are "broken" and so again should be accorded little weight; and (iii) that policies HS22 and HS24 have been superseded by more recent guidance, in the form of para. 47 of the NPPF, and so should be regarded as being outdated in the manner explained by Lord Clyde in *City of Edinburgh Council*. I do not accept these submissions.

42. As to (i), policies HS22 and HS24 were saved in 2007 as part of a coherent set of Local Plan policies judged to be appropriate for the Council's area pending work to develop new and up-to-date policies. There was nothing odd or new-fangled in the inclusion of those policies in the Local Plan as originally adopted in 1997. It is a regular feature of development plans to seek to encourage residential development in appropriate centres and to preserve the openness of the countryside, and policies HS22 and HS24 were adopted to promote those objectives. Those objectives remained relevant and appropriate when the policies were saved in 2007 and in general terms one would expect that they remain relevant and appropriate today. At any rate, that is something which needs to be considered by the planning inspector when the case is remitted, along with the question of the consistency of those policies with the range of policies in the NPPF under the exercise required by para. 215 of the NPPF. The fact that the explanatory text for policy HS24 refers to the Structure Plan does not detract from this. It is likely that the Structure Plan itself was formulated to promote those underlying general objectives and the fact that it has now been superseded does not mean that those underlying objectives have suddenly ceased to exist. As the judge observed at [49], "some planning policies by their very nature continue and are not 'time-limited', as they are re-stated in each iteration of planning policy, at both national and local levels."

43. As to (ii), the metaphor of a plan being "broken" is not a helpful one. It is a distraction from examination of the issues regarding the continuing relevance of policies HS22 and HS24 and their consistency with the policies in the NPPF. As Mr Kimblin developed this submission, it emerged that what he meant was that it appears that the Council has granted planning permission for some other residential developments in open countryside, i.e. treating policy HS24 as outweighed by other material circumstances in those cases, and that it relies on those sites with planning permission, among others, in order to show that it has a five year supply of deliverable residential sites for the purposes of para. 47 (second bullet point) and para. 49 of the NPPF. Mr Kimblin says that this shows that the saved policies of the Local Plan, if applied with full rigour and without exceptions, would lead the Council to fail properly to meet housing need in its area, according to the standard laid down in paras. 47 and 49 of the NPPF. Therefore, he says, no or very reduced weight should be accorded to policies HS22 and HS24.

44. In my view, this argument is unsustainable. We were shown nothing by Mr Kimblin to enable us to understand why the Council had decided to grant planning permission for

> development of these other sites. So far as I can tell, the Council granted planning permission in these other cases in an entirely conventional way, being persuaded on the particular facts that it would be appropriate to treat material considerations as sufficiently strong to outweigh policy HS24 in those specific cases. Having done so, there is no reason why the Council should not bring the contribution from those sites into account to show that it has the requisite five year supply of sites for housing when examining whether planning permission should be granted on Gladman's application for the site in the present case. The fact that the Council is able to show that with current saved housing policies in place it has the requisite five year supply tends to show that there is no compelling pressure by reason of unmet housing need which requires those policies to be overridden in the present case; or – to use Mr Kimblin's metaphor – it tends positively to indicate that the current policies are *not* "broken" as things stand at the moment, since they can be applied in this case without jeopardising the five year housing supply objective. In any event, an assessment of the extent of the consistency of policies HS22 and HS24 with the range of policies in the NPPF is required, as set out in para. 215 of the NPPF, before any conclusion can be drawn whether those policies should be departed from in the present case."

37. In *Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government and Central Bedfordshire Council* [2019] EWHC 127 (Admin), Dove J observed, at [19], that paragraph 44 of Sales LJ's judgment in the *Daventry District Council* case, which I have set out above, was *obiter dicta* and he added, at [37]:

> "… all that Sales LJ was suggesting was that the fact that the council had granted planning permission for some of the sites in the five-year housing land supply on sites in breach of policy HS 24 would not in and of itself justify a conclusion that that policy was out of date. That was an issue which would require, again, careful evaluation against the background of the terms of the policy, the available evidence as to its performance and scrutiny of its consistency with the Framework. That will inevitably be a case-sensitive exercise…."

38. In *Telford and Wrekin BC v Secretary of State for Communities and Local Government* [2016] EWHC 3073 (Admin), the Council submitted that an inspector erred in law in treating its grant of planning permission outside the settlement boundary as a factor supporting his conclusion that the policies on settlement boundaries were out-of-date. I held, at [25], that the inspector was entitled to have regard to other grants of planning permission as it was plainly a relevant consideration supporting the contention that current housing needs could not be adequately met within the settlement boundaries identified in the policies. The weight to be given to this consideration was a matter of planning judgment for the inspector, not the court.

Conclusions

Ground 1

39. In my judgment, the Inspector's reasons for concluding that the conflict with policies CP9, CP11 and CCO2 should be afforded 'significant' rather than 'full weight' were both intelligible and adequate, when read fairly, in the context of the decision as a whole.

40. In the decision, the Inspector gave detailed consideration to the relevant policies, and the extent to which the proposed development would be in conflict with them.

41. At DL9, he had regard to the fact that the Site is within a Strategic Development Location which is designated in the Core Strategy (adopted in 2010). Following adoption of a Supplementary Planning Document in 2014, the pre-existing development limits were extended. Policy CP19 provides for mixed use development in this area, including around 2,500 dwellings by 2026.

42. At DL9 and 10, the Inspector found that the housing element of the proposed development would not accord with CP11 or CC02, as it is outside the development limits in those policies. However, the SANG proposal would be in accordance with CP11.

43. At DL11 and 12, the Inspector found that the affordable housing element of the proposed development would accord with CP9, which permitted affordable housing adjoining the development limits, but that the market housing element would not be in accordance with CP9. The proposed development would meet the aims of CP9 because the location is accessible by sustainable means, and has good services and facilities. The Inspector identified that many of the services and facilities were new; the Second Defendant relied on the fact that these post-dated the settlement limits.

44. At DL13, the Inspector referred to the Shinfield Parish Neighbourhood Plan, made in February 2017, which supports development within the development limits. It only supports development adjacent to those limits where the benefits of the development outweigh its adverse impacts.

45. Under the heading 'Character and Appearance', the Inspector identified the 'less than substantial harm' to the heritage asset, by the reduction of its open setting, to which he gave weight. As required by the Framework, he went on to consider the public benefits to be weighed against the harm, namely, the SANG and the proposed affordable housing. He said, at DL27:

> "27. I give further significant weight to the benefit of the proposed affordable housing because of the acute need for such housing in the area.There are over 1,800 households on the Council's housing register awaiting rented accommodation and at least 1,500 households on the shared ownership register. It is evident that although the Council is taking action to deliver the 441 affordable homes needed annually, as revealed by the Berkshire Strategic Housing Market Assessment (2015),

> through its housing company, the past record of delivery has fallen short of that figure."

46. The Inspector found, at DL36, that there would be "some harm to the character and appearance of the area in terms of the extension of built frontage along the road, the reduction of the gap between the settlements and the additional development close to the ridge". He found that the extent of the harm would be limited, but nonetheless it would "introduce built development outside of the currently defined development limits and into open countryside" contrary to CP9, CP11 and CC02. However, the SANG provision would maintain or enhance the high quality of the environment, as required by CP1.

47. At DL52, the Inspector referred to the agreement between the parties that the housing numbers set out in CP17 were out-of-date, as they were based on the South East Plan which had been revoked. He explained, applying the Framework, that the housing need for the period 2018 to 2023 is 4,320 dwellings, including a 5% buffer. This would require delivery of 907.2 dwellings per annum ("dpa"), which significantly exceeds the 723 dpa specified in CP17.

48. The Claimant's evidence to the Inquiry was that it was currently in the process of updating its Local Plan, with consultation due to take place in Autumn 2019.

49. At DL55, the Inspector found that the development limits in CP9, CP11 and CC02 were out-of-date because they were based on the outdated housing requirement in CP17. The Second Defendant's evidence at the Inquiry, given by Mr Paterson-Neild, was that "the settlement boundaries for the [Strategic Development Location] were predicated on the now out-of-date Core Strategy housing requirement as acknowledged in the Settlement Separation and Development Limit Boundaries report prepared for the Claimant by David Lock Associates …". The Lock report, dated June 2012, was in evidence at the Inquiry, and stated:

> "4.11 The new proposed boundaries do not allow more development than that which is set by the Core Strategy, nor do they allow less SANG than is required according to the formula set out in the Core Strategy."

I do not consider that the Inspector was required to set out this evidence in support of his conclusion, since there was no evidence to the contrary, and the link between the housing requirements and the development limits was not disputed by the Claimant.

50. In support of his conclusion, the Inspector referred, at DL54, to the Stanbury House appeal in which "the Inspector gave limited weight to the development boundaries on the basis that they were derived from Policy CP17". He observed that the housing need in the instant appeal was even higher than the figure in the Stanbury appeal. The parties would have been aware that the Stanbury appeal related to the same policies in the same geographical area. The decision was in evidence at the Inquiry and it was not challenged.

51. The Inspector found, at DL52, that the Claimant had a 6.83 years supply of deliverable housing sites, and therefore the tilted balance in paragraph 11(d) of the Framework was not engaged on the basis of housing land supply. It was agreed

between the parties at the Inquiry that the Claimant met the minimum five year housing land supply specified in the Framework.

52. However, at DL53, the Inspector found that part of the 6.83 years housing land supply had been achieved by using land outside the development limits. Submissions were made on this issue at the Inquiry, and some evidence was adduced, which I refer to later on this judgment. The supporting evidence referred to by the Inspector was the decision in the recent Lambs Lane appeal where "the Inspector noted the use of land outside the development limits in achieving the housing land supply and considered that this could reduce the weight to be given to those limits", though not to the aims of the policies. The Stanbury appeal inspector made a similar distinction between the development limits and the aims of the policies. The parties would have been aware that the Lambs Lane appeal related to the same policies in the same geographical area. The decision was in evidence at the Inquiry and it was not challenged.

53. At DL55, the Inspector reached a similar conclusion to the inspectors in the Stanbury and Lambs Lane appeals, namely, that the development limits were out of date because they were based on an outdated housing requirement, but the aims of CP9, CP11 and CC02 were generally consistent with national policy. He correctly directed himself that it was important to look at the underlying aims of the policy in deciding the weight to be given to the conflict with them. He summarised the ways in which the proposed development was in accordance with underlying policy aims, having addressed these matters addressed more fully earlier in the decision.

54. At DL56, the Inspector concluded that because the development limits were out-of-date, policies CP9, CP11 and CC02 were not fully up-to-date. He did not consider that the tilted balance in paragraph 11(d) of the Framework was engaged. However, he found that the conflict with them did not attract full weight. Applying paragraph 213 of the Framework, he took into account the significant degree of consistency between the proposal and the underlying aims. In the light of all these factors, he gave significant rather than full weight to the policy conflict. In my view, the Inspector's application of the Framework to his findings would have been understood by the parties at the Inquiry.

55. The weight to be given to the policies was an important issue in the appeal, as the Second Defendant contended before the Inspector that the development limits in the policies were out-of-date, whereas the Claimant argued that they should be afforded full weight. It is apparent that the Inspector did not accept the Council's submissions.

56. In my judgment, the Inspector's reasons met the standards set out by Lord Brown in *South Buckinghamshire District Council v Porter* (No 2) and by Lord Carnwath in *Dover DC v CPRE (Kent)*. They explained his conclusions on the weight to be afforded to the policies, and I cannot accept that the Claimant did not understand his reasoning. I agree with Ms Lean's submission, on behalf of the First Defendant, that, in reality, the Claimant's complaint was that the Inspector's reasons were not rational.

57. In *South Buckinghamshire District Council*, Lord Brown said that a reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision. No such prejudice has been demonstrated in this case.

58. For these reasons, Ground 1 does not succeed.

Ground 2

59. The Claimant submitted that, if the Inspector's reason for his conclusion was simply that the housing requirements in CP17 were out-of-date, he took into account an immaterial consideration and/or his conclusion was irrational.

60. As I have shown in my analysis of the Inspector's reasoning under Ground 1, his reasons were more extensive than the Claimant suggested, and they were based on a careful assessment by him, in accordance with the case law cited above. In my judgment, the fact that the development limits in the policies were derived from the out-of-date housing requirements in CP17 was clearly a relevant factor for the Inspector to take into account, and the Inspector's conclusion was a rational one which he was entitled to make. It was not analogous to deciding that the policies were out-of-date merely on the basis of their chronological age; there was an issue of real substance here. As Lindblom J. said in *Bloor Homes,* at [19]:

> "The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court."

61. For these reasons, Ground 2 does not succeed.

Ground 3

62. The Claimant submitted that the Inspector failed to have regard to a material consideration, namely, whether or not the development limits were preventing the Council from complying with national policy on the five year housing land supply.

63. The Claimant relied upon Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government and Central Bedfordshire Council [2019] EWHC 127 (Admin) and Telford and Wrekin BC v Secretary of State for Communities and Local Government [2016] EWHC 3073 (Admin), which I have referred to above. In my judgment, these cases turned on their own particular facts, and the challenge made to the inspectors' decisions. I do not accept the Claimant's submission that these cases establish a binding principle that a grant of planning permission outside settlement boundaries can only be accorded weight in so far as it indicates that the strict application of settlement boundaries would prevent the area's five year housing land supply being met. An inspector must decide in the context of the facts and circumstances of each case whether, and to what extent, the grant of planning permission outside settlement boundaries is a material consideration, and if so, how much weight to accord to that factor. In principle, an inspector is entitled to have regard to the area's housing needs and housing land supply beyond the five year minimum requirement, as significantly boosting the supply of a sufficient number and variety of homes is a key policy objective of the Framework (paragraphs 59 and 8b).

64. On my reading of the decision, the Inspector was clearly aware that the Council had a 6.83 years supply of housing, which was in excess of the minimum five year requirement in the Framework. At DL53, he found that part of the supply was

achieved by using land outside the development limits. He did not seek to specify precisely how much of the supply was achieved through sites outside the development limits.

65. In my judgment, the evidence adduced by the parties at the Inquiry was unsatisfactory, and prevented the Inspector from carrying out a more detailed analysis of the number of sites outside the development limits. Mr Church, Team Manager (Senior Specialist) in the Council's Growth and Delivery Team, gave extensive evidence on the Council's housing needs and supply, but only briefly touched on the development which had taken place outside development limits. He was asked by the Council's counsel whether the Council "had abandoned settlement boundaries in Strategic Development Locations" and he was asked about some specific sites outside development limits. He said that the Council had not abandoned settlement boundaries. He mentioned grants of permission at Shinfield, and at Bell Lane (128 dwellings) and Keephatch Beech (up to 300 dwellings) outside the settlement boundary, which were referenced in the Core Documents for the Inquiry, and confirmed that the Council would still have a five year housing land supply without these dwellings.

66. However, in his statement for the hearing in the High Court, Mr Church gave much more detailed evidence on this matter. He concluded that 1,113 dwellings across 8 sites are located outside settlement boundaries, of which 840 are included in the Council's five year housing land supply. The remaining 273 dwellings are anticipated to be delivered from 1 April 2023 onwards (paragraph 13). This material was not provided to the Inspector by the Council, apparently on the grounds that it had not been identified as an issue in the appeal.

67. The Second Defendant took issue with this evidence, and its planning consultant claimed in evidence that around 1,400 dwellings were derived from sites outside settlement boundaries, though this figure was subsequently reduced to 1,203 dwellings in the Second Defendant's draft closing submissions, prior to final amendment. A table setting out the evidence in detail was submitted, but the Claimant objected to its admission on the grounds that it had been produced too late for it to have a fair opportunity to respond. The Inspector upheld the Claimant's objection and refused to admit the evidence.

68. In their closing statements, the Claimant and the Second Defendant made competing submissions. The Second Defendant criticised the reliability of Mr Church's evidence, submitting that "a number" of the projected dwellings to be delivered in the years up to 2026 related to permissions on land outside development limits, so the claim of a significant boost to housing being achieved solely within current limits was not accepted. It could not specify the number as its table of evidence had been excluded. The Second Defendant also emphasised the serious failure to deliver sufficient affordable housing, within the overall supply.

69. In response, the Claimant submitted in its closing statement that the Second Defendant had misunderstood Mr Church's evidence, and summarised the reasons for grant of permission in the three major developments referred to by Mr Church. It concluded, at paragraph 51:

> "The grant of such permissions in the past does not demonstrate that reduced weight should now be given to settlement boundary policies Firstly, because they represent the normal working of the planning system and the flexibility of the strategy of the plan, rather than some general indictment of the policies in the plan. Secondly, because even if (as in the case of a former lack of 5 year housing land supply) they do relate to historic problems of housing delivery, however caused, that is no reason to give reduced weight to settlement boundary policies *now*. They are not preventing any obstacle to delivery *now*."

70. In my view, the unsatisfactory way in which the parties conducted their respective cases (as described above) placed the Inspector in a difficult position, as he was faced with conflicting evidence and submissions as to the number of sites outside development boundaries, in relation to the housing land supply, but he did not have sufficient evidence before him to make a detailed assessment. The parties did not present the relevant evidence to him fully, and in accordance with the timetable. He reasonably decided it was unfair to the Council to admit the Second Defendant's evidence at such a late stage, when the Council had not presented detailed evidence on this matter. In those circumstances, I consider the Inspector was entitled simply to rely upon the unchallenged conclusions of the inspector in the recent Lambs Lane decision, at the same village (Spencers Wood), who "noted the use of land outside development limits in achieving the housing land supply and considered that this would reduce the weight to be given to those limits", in support of his conclusion that part of the housing land supply of 6.83 years had been achieved by using land outside the development limits (DL53). The Inspector did the best he could in the circumstances in which he found himself, which were not of his making.

71. I do not consider that the Inspector failed to have regard to the brief evidence of Mr Church, and the Council's closing statement; rather, that in the unusual circumstances of this Inquiry, he could not resolve the dispute on the figures.

72. In my view, the Council misunderstood the witness statement made by the Inspector in which he said, at paragraph 7, that he was not presented with any evidence during the course of the inquiry as to whether the development limits were preventing the achievement of a five year housing land supply. I accept the First Defendant's submission that the Inspector was responding, in paragraph 7, to a different point, namely, the controversial pleading in the Council's Statement of Facts and Grounds, at paragraph 28, that the Inspector was "apparently not concerned with the relevant question of whether the Development Limits remained appropriate in light of current needs". Both Defendants firmly submitted that it was neither appropriate nor possible for an Inspector hearing an individual appeal to determine whether development limits in a local plan were appropriate in light of current needs. That was a matter which ought properly to be assessed and determined when a proposed local plan was considered (which was already under way in this local planning authority's area). I agree with the Defendants' submission on this point.

73. For the reasons set out above, Ground 3 does not succeed.

Ground 4

74. The Claimant submitted that the Inspector acted unfairly in relying upon the fact that some of the sites in the Claimant's five year housing land supply fell outside settlement boundaries without requesting evidence and/or submissions on this matter from the Claimant.

75. I repeat paragraphs 64 to 71 of my judgment which describes events at the Inquiry. In my judgment, the Inspector did not act unfairly. The Claimant must have been aware that the extent to which development had occurred outside settlement limits was potentially relevant, not least because of the previous inspector's decision in Lambs Lane which was part of the evidence at the Inquiry. The Claimant adduced evidence on this matter in its evidence in chief, and made submissions on it. The Claimant was given a fair opportunity to address this matter and chose not to do so in any detail. The Inspector acceded to the Claimant's submission that the table of evidence produced by the Second Defendant was to be excluded because the Claimant had not had an opportunity to respond to it. If the Claimant wished the Inspector to take an alternative course (e.g. adjourning the Inquiry to give the Claimant time to adduce further evidence), it could have requested the Inspector to do so.

76. For these reasons, Ground 4 does not succeed.

Final conclusion

77. For the reasons I have given above, the claim is dismissed. Therefore, the question of whether or not to grant relief does not arise.