EVANS JONES

Surveyors & Planning Consultants

Project Management

Planning Consultants

Building Surveyors

Disabled Access Consultants

Planning Statement

The Chalet
White Cottage
Porthloo
St Mary's
Isle of Scilly
TR21 0NF

Prepared on Behalf of:
Mr Eric Hicks of
White Cottage,
Porthloo
St Mary's
Isle of Scilly, TR21 0NF

Date : May 2015
Ref :12484

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1 Introduction

1.1 This statement is submitted to provide supplementary information in connection with the applicants proposal at the above named site. This statement forms part of our clients planning application and should thus be read together with the application forms, plans and other relevant statements submitted in connection with this proposal.

1.2 This planning statement is submitted in support of a planning application for a replacement dwelling at the site known as The Chalet, White Cottage, Porthloo, St Mary's, Isle of Scilly. This proposal for a replacement dwelling follows the deemed grant of planning permission issued by the Planning Inspectorate in response to an enforcement notice issued by the authority in February 2015. A copy of the inspector's decision notice is attached at Appendix A.

1.3 This proposal seeks consent for a replacement dwelling. The existing dwelling on site was approved by government inspector in connection with an enforcement notice and associated deemed planning application.

1.4 The application site lies within the residential curtilage of White Cottage, Porthloo. The land upon which the Chalet is located is thus located within the residential garden of White Cottage. It is thus appropriate to consider the extent of residential curtilage associated with the Chalet and that associated with White Cottage.

1.5 Within your authority's enforcement notice dated 10 February 2015, the site plan attached to the notice delineated the residential curtilage with a blue outline upon the plan attached to the enforcement notice. The Chalet building was

1.6 The alleged breach of planning control within the enforcement notice related solely to the use of the building (the Chalet) as a self-contained unit of accommodation. The building itself exceeded the size and limitation as

defined within the general development permitted development order (2008) i.e. development permissible within the residential curtilage of dwelling as defined within class E1(b), E2 or E3 of Part 1 of Schedule 2 of the Town and Country Planning General Development order i.e. the order applicable at the date the enforcement notice was served.

1.7 You will be aware that Part 1 of Schedule 2 of the 2008 GPDO is titled **'Development within the curtilage of a dwelling house'.**

1.8 It is thus apparent that your authority accepted that the whole of the land outlined in blue upon the enforcement notice of 10 February 2015 comprised land within the residential curtilage of a dwelling house.

1.9 As your enforcement notice concerned the use of a building and the alleged construction of a building without planning permission the notice rightly related to the building in isolation i.e. the building itself was outlined with a red line.

1.10 As the building itself lay within the curtilage of a residential dwelling upon land which your authority have accepted is residential garden there was no need for your authority to extend the red line of the enforcement notice beyond the outer limits of the building enforced against.

1.11 Following the deemed grant of planning permission for use of the Chalet as a self-contained dwelling it is appropriate that land surrounding the dwelling and associated with it now forms the residential curtilage to that dwelling. The relevance of the above comments will be explained later within this statement.

2 Site history

2.1 The site has been in the applicants control since 2004. The land purchased at that time comprised a larger land parcel, the site was subsequently split to allow for the construction of the adjacent dwellings namely Rope Walk and Samson House.

2.2 The retained land is that outlined in blue upon the enforcement notice plan (Appendix B) This comprises the residential dwelling known as White Cottage and the separate dwelling now approved (the Chalet) all sited upon land accepted to be residential garden.

3 Relevant planning history

3.1 The most recent relevant history is that of the enforcement notice appeal which was determined on 20 October 2015. (Appendix A)

3.2 In granting consent and allowing the appeal the inspector concluded that section A and B as referenced within that appeal already benefited from permitted development rights and it would serve little purpose to withdraw them from part of the structure. In respect to Section C the inspector did not consider it expedient to withdraw permitted development rights, it is thus notable that the inspector did not comment upon the extent of the residential curtilage as this was not material to the enforcement appeal.

4 The replacement dwelling proposal

4.1 The proposal before your authority seeks planning permission for a replacement dwelling i.e. replacing the dwelling which was approved by the inspector in October 2015 with a new replacement dwelling. Part of the new dwelling proposed extends over the outline of the site of The Chalet. It is acknowledged that demolition of The Chalet will be required prior to commencement of construction of the proposed dwelling. This should be imposed via planning condition or if considered expedient the matter may be controlled via S106 agreement.

4.2 The architect has prepared two alternative options for consideration by your authority. It is, however, acknowledged that prior to formal determination your

authority will seek and be given clarification as to which of the two alternative options the applicant wishes to seek determination upon at this stage.

4.3 Both alternatives schemes indicate a modest two bedroom house designed in the local vernacular style. Discussions as to the design and detailing are a matter for discussion and agreement between your authority and the applicant's designer.

5 The planning case in support

5.1 The NPPF requires that local authority's plan for growth and significantly boost the supply of housing. This in part is achieved by a requirement for local authorities to maintain a five year supply of housing land.

5.2 When local authorities fail to make adequate provision for housing to meet the five year supply requirement (plus either 5 or 20% as appropriate) then there is a presumption in favour of sustainable development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (NPPF paragraph 14 and 49).

5.3 In this case the dwelling already exists thus the proposal will not contribute to the overall housing supply, it will however improve the quality of housing supply providing a dwelling of a design which is appropriate to its setting and environs of more permanent design and detailing. Your authority's five year supply position is thus not critical to the success of this proposal. Although it remains a material consideration.

5.4 Until recently residential gardens of all properties were thought to be excluded from the definition of brownfield land. Indeed this was the generally accepted position prior to the High Court decision reference CO/4129/2015 (Dartford Borough Council –v- SSCLG) – ***the Dartford case***. Appendix D

5.5 Your authority will be aware that NPPF at annex 2: Excludes from the definition of previously developed land: ***'Land in built-up areas such as***

private residential gardens …'.

5.6 The Dartford case, however, clarifies the definition within annex 2 of the NPPF making a clear distinction between properties lying within and without an urban area.

5.7 The High Court decision concludes that the exclusion from the definition of ***brownfield*** land applies only to residential properties within urban environments and it does not apply to residential properties lying within rural or semi-rural locations.

5.8 On this basis this proposal should be determined against brownfield land use policy, specifically NPPF paragraph 17, bullet point 8, which seeks to encourage the effective use of land by re-using land that has been previously developed (brownfield land).

5.9 Paragraph 111 goes on to confirm that planning policies and decisions should encourage effective use of land by re-using land that has been previously developed (brownfield land).

5.10 In addition there is a second recent case from the Court of Appeal case number C1/2015/0583 and C1/2015/0894 – Suffolk Coastal District Council/Hopkins Homes Limited and SSCLG and Richmond Estates Partnership LLP and Cheshire East Borough Council and SSCLG (**the Cheshire case**) Appendix D. The second case turned on whether the authority's green gap policy was judged to be out of date, the Court of Appeal ruling at paragraph 33 confirmed

'Our interpretation of the policy does not confine the concept of 'Policies for the supply of housing' merely to policies in the development plan provide positively for the delivery of new housing in terms of numbers and distribution or the allocation of sites. It recognises that the concept extends to plan policies whose effect is to influence a supply of housing land by restricting the locations where new housing may be developed, including, for example,

policies for the green belt, policies for the general protection of the countryside, policies for conserving the landscape of areas of outstanding natural beauty and national parks, policies for conservation of wildlife or cultural heritage, and various policies whose purpose is to protect the local environment in one way or another by preventing or limiting development. It reflects the reality that policies may serve to perform a supply of housing land either by creating it or by constraining it, the policies of both kinds make the supply what it is."

5.11 In view of the fact that your authority have a lack of housing supply, it follows from reading the above cases that this development proposal should now be considered against brownfield land policies and secondly existing local planning policies which seek to limit development in the AONB must now be considered out of date and not necessarily compliant with the NPPF.

5.12 Whilst your authority are moving forward with the local plan review, this is yet to reach a stage whereby it comprises a material consideration at this time. The most up-to-date policy guidance is thus the NPPF and associated appeal and High Court decisions.

6 Adopted Local Plan.

6.1 Notwithstanding my comments concerning the relevance of adopted local plan policy and national policy it is appropriate that I also give consideration to policies with the adopted plan weighing the planning balance against the more up-to-date policies within the NPPF.

6.2 Policy 2 confirms that development will be permitted in situations where a proposal would, where practicable and appropriate, contribute to the sustainability of the island environment, economy or local communities through ***(b) ensuring or facilitating the re-use of previously developed land and existing buildings for the economic, social and environmental benefit of the islands and local community taking into account any environmental designations set out in policy 1***

6.3 Explanatory paragraph 26 goes on to confirm at bullet point 3:- 'Maximising the efficient use of buildings and land, particularly where it has been previously developed'.

6.4 Policy 3; housing confirms at items 1, 2 and 3 commentary upon the means by which your authority seek to control new housing development and ensure that it is restricted to local need or to accommodate a key-worker or provision of staff accommodation for businesses on or near the premises.

6.5 In your authority's pre-application response, I note that officers suggested that the proposed new dwelling proposed be subject to similar controls.

6.6 In view of the extant residential use on site and the fact that this proposal does not seek to provide a greater number of bedrooms, I submit that the imposition of a restriction upon future occupants is unreasonable having regard to the extant consent on site.

6.7 Item 4 of policy 3 confirms that new dwellings should be sited adjacent to or integrated within the existing settlement or established group of dwellings.

6.8 Notwithstanding my comments earlier concerning the brownfield status of this site, I submit that this proposals accords with the requirements of item 4 insofar as the proposed dwelling is sited adjacent to and integrated within an existing group of dwellings, furthermore item 5 requires that development proposals would result in an inappropriate mix of dwelling sizes or net loss to the residential housing stock will not be permitted.

6.9 This proposal is neutral in terms of housing stock insofar as it replaces a two bedroom dwelling with a new two bedroom dwelling but of a design which is appropriate to its environs

6.10 The development will not cause harm to any interest of significant importance and the development will make the best use of this previously developed site.

7 Conclusions

7.1 This is development proposal for a replacement dwelling. Your authority have no specific policies relating to replacement dwellings within the adopted local plan, there are no specific policies which restrict consent within the adopted plan or within emerging policy.

7.2 The above taken together with the fact that this would site would now be considered as a brownfield site within a group of existing dwellings weighs heavily in favour of consent being granted for this proposal.

7.3 The proposed development is thus compliant with the objectives set out within the NPPF, it is not in conflict with the policies of the adopted local plan and/or emerging policy published to date.

7.4 The proposal will deliver a high quality dwelling whilst not increasing the number of dwellings on site it will complement the site and its immediate environs and offers significant enhancement over and above the existing timber dwelling approved last year.

7.5 Having regard to all material considerations we urge your authority to approve this application (without occupancy restriction).

6.5 Should you wish to discuss this matter further then please do not hesitate to contact the undersigned.

D M Jones MRTPI, MRICS
Chartered Town Planner
Chartered Surveyor

APPENDIX A

The Planning Inspectorate

Appeal Decision

Site visit made on 25 September 2015

by P N Jarratt BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 October 2015

Appeal Ref: APP/Z0835/C/15/3006441
The Chalet, White Cottage, Porthloo, St Mary's, Isles of Scilly , TR21 0NF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr E Hicks against an enforcement notice issued by Council of The Isles of Scilly.
- The Council's reference is E/15/006.
- The notice was issued on 10 February 2015.
- The breach of planning control as alleged in the notice is without planning permission, (1) the erection of the Building; and (2) the change of use of the Building to a use as a separate dwelling house.
- The requirements of the notice are:
  (a) stop using any part of the Building as a dwelling; and,
  (b) Remove the building and all equipment from the land.
- The period for compliance with the requirements is 16 weeks.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
- **Summary of decision: Appeal allowed, notice quashed and planning permission granted in part.**

The site and relevant planning history

1. The appellant purchased White Cottage and adjoining land in 2004. It is unclear whether the planning unit at that time comprised the whole of the site or was restricted to the dwelling of White Cottage and its garden which extends to the road.

2. The appeal site is a 2 bedroom chalet constructed between White Cottage and the road and is contained within a garden area surrounded by hedgerows although there is a wide opening in the hedgerow between the garden areas of White Cottage and the chalet. The chalet is very modest in size and is of timber construction with a part felt and part corrugated roof. It has the appearance of a domestic outbuilding such as a large shed.

3. The chalet and the attached garden store were constructed in stages although the store does not form part of the allegation and is excluded from the appeal site. The chalet contains a small lounge, kitchen, bathroom and 2 bedrooms and is connected to the usual services.

4. Two applications have been refused for an LDC for the use of the structure as an independent dwelling (P/14/039/CLE and P/14/062/CLE). No appeals were lodged against the refusals. The Council acknowledges that more evidence has

been produced in this appeal than for the LDC applications including details of the evolution of the building and the submission of statutory declarations.

The appeal on ground (d)

5. An appeal on this ground is that at the time the enforcement notice was issued (10 February 2015), no enforcement action could be taken in respect of any breach of planning control relating to the matters stated in the notice. The breach relates to the erection of a building and to its change of use as a separate dwelling house. It is necessary for the appellant to demonstrate on the balance of probability that the building was substantially completed and continuously occupied as a dwelling for a period of four years prior to the issue of the notice. The relevant date is therefore 10 February 2011.

6. Some 23 statutory declarations have been submitted by the appellant in support of his case.

The building

7. The appellant states that the building was constructed in 3 phases. The original Section (A) was constructed in 2005, replacing an earlier structure, and comprised a living room, bedroom/kitchenette and shower room. This was extended in 2007 with the addition of a bedroom and changes to the internal layout (Section (B). It was further extended with an additional bedroom and attached garden store (Section (C)) but as referred to earlier, the garden store does not form part of the allegation or the appeal site.

8. An aerial photo taken in 2009 and submitted by the appellant shows Sections (A) and (B) although there is no date on the photo. An oblique aerial photograph submitted by Richard Hand and Claire Harvey with their statutory declarations shows the same sections of the building and the date of the oblique photograph is stated to be February 2009.

9. In the statutory declaration of Miss Joanne Salter, she states that she lived at the chalet with Miss Leanne Hicks (the appellant's daughter) from July 2009 to September 2010 and that a second bedroom was added later. Consequently the earliest date that Section (C) could have been constructed is after September 2010. Mr Stuart Thomas in his statutory declaration states that he helped the appellant build the second bedroom and small shed in 2010. This would still have been achievable within that year and I have no reason not to accept his declaration.

10. On the basis of the evidence before me I conclude that the chalet structure was constructed more than four years before the relevant date and accordingly it would therefore be immune from enforcement action against operational development through the passage of time. I note the Council's comments in respect of the building not being constructed under permitted development rights but in view of my conclusion regarding when the various sections were built, this argument carries little weight.

The use

11. Some of the statutory declarations are of little evidential value as they do no more than state that Ms. Leanne Hicks was at the property at certain times, with no information about the internal layout or whether it was being used independently of the White House. However evidence from some of the

declarations, including those from tradesmen, indicate that the use and occupation of the building as it was extended was as follows.

12. Section (A) was occupied By Ms Leanne Hicks from the end of 2006 who continued occupation after Section (B) was built in 2007 until November 2012. She vacated the property between October and December 2008 whilst at College. Her boyfriend Chris Mumford stayed at the chalet from time to time from September 2006 to April 2008.

13. Sections (A), (B) and (C) were occupied by Ms Leanne Hicks from the end of 2010 for 1 year 10 months when the appellant, Mr Hicks occupied the building from November 2012 to September 2014, whilst White Cottage was being refurbished. Mr Liam Richards lived in the second bedroom in the summer of 2012. Since Mr Hicks' re-occupation of White Cottage in September 2014, the agent advises that The Chalet has been vacant.

14. The agent is of the view that if the occupation of the sections of the building is considered separately, then Section (C) has not been occupied in excess of 4 years and the use is not immune from enforcement action. I see no reason to disagree with this conclusion.

15. With the exception of Section (C), the property has been occupied as an independent dwelling in excess of 4 years prior to the relevant date. Although there was a period of non occupation for a short time in 2008, this is not significant in that more than 4 years have elapsed since then and prior to the relevant date. Balanced against this is the absence of any tenancy agreements, separate Council Tax or utility bill records to support the argument that the chalet has been used as a separate independent dwelling. Furthermore, the Council draws attention to the common practice of some islanders to move out of their main residence to a curtilage building for the purpose of renting out the main building as a holiday let. However, in this case I consider that the Sections (A) and (B) have been occupied as an independent dwelling for the relevant period.

16. I conclude that the appeal on this ground should succeed insofar as the operational development carried out in 3 stages has been substantially completed in excess of 4 years prior to the date of the notice; and that the use of Sections (A) and (B) as a self contained dwelling has also continued for a similar period. However the use of Section (C) as a dwelling has not been continuous for the requisite 4 year period and the appeal on this ground in respect of this part of the building fails. As the appeal is successful for Sections (A) and (B) it is unnecessary for me to consider the appeal under grounds (a) and (f). However I consider the ground (a) appeal for Section (C) (excluding the garden store) below.

The appeal on ground (a)

17. As I have already concluded that the operational development representing the final part of the chalet erected as Section (C) is lawful, the appeal on this ground relates solely to whether planning permission should be granted for the use of the structure as part of the lawful dwelling occupying Sections (A) and (B) of the chalet.

18. I consider the main issues to be the effect of the development on the character and appearance of the Conservation Area, the Area of Outstanding Natural

Beauty and Heritage Coast; and, whether development accords with relevant national and local planning policy.

19. As the structure exists and is lawful, and that the use of Sections (A) and (B) is lawful, I consider that the use of Section (C) (excluding the garden store) as a part of the dwelling would have no material effect on the character or appearance of either the Conservation Area or AONB and Heritage Coast.

20. The parties make reference to the requirement of the National Planning Policy Framework in respect of the provision of a 5 year supply of housing but such considerations are irrelevant given my conclusion that the use of Sections (A) and (B) of the chalet as a dwelling is lawful. Similarly due to the facts in this case I attach little weight to the saved Policy 3 of the Isles of Scilly Local Plan 2005 which seeks to ensure that new housing is made available to meet the needs of the local community housing.

21. The Council has suggested that in the light of permission being granted for the whole structure, two conditions should be imposed; namely that permitted development rights should be withdrawn for external alterations to the structure and that a plan should be submitted showing the domestic curtilage.

22. Neither condition would be appropriate. Being lawful, Sections (A) and (B) will already benefit from permitted development rights and it would serve little purpose to withdraw them from part of the structure. In respect of the curtilage, the allegation relates only to a 2 bed chalet as outlined in red on the plan attached to the enforcement notice and not to any garden land that could constitute a curtilage for the purposes of establishing permitted development rights. That would be a matter to be determined by the Council at a future time.

23. Having had regard to all the material considerations, I conclude that planning permission should be granted for the use of Section (C) (excluding the garden store) as part of the dwelling known as the Chalet that I have found to be lawful.

Conclusion

24. For the reasons given above I conclude that the appeal should succeed in part on ground (d) and in part on ground (a) and planning permission will be granted for the use of Section (C) (excluding the garden store) of the chalet for use as a part of the dwelling known as the Chalet. Accordingly the enforcement notice will be quashed. In these circumstances the appeal under ground (f) set out in section 174(2) to the 1990 Act as amended does not need to be considered.

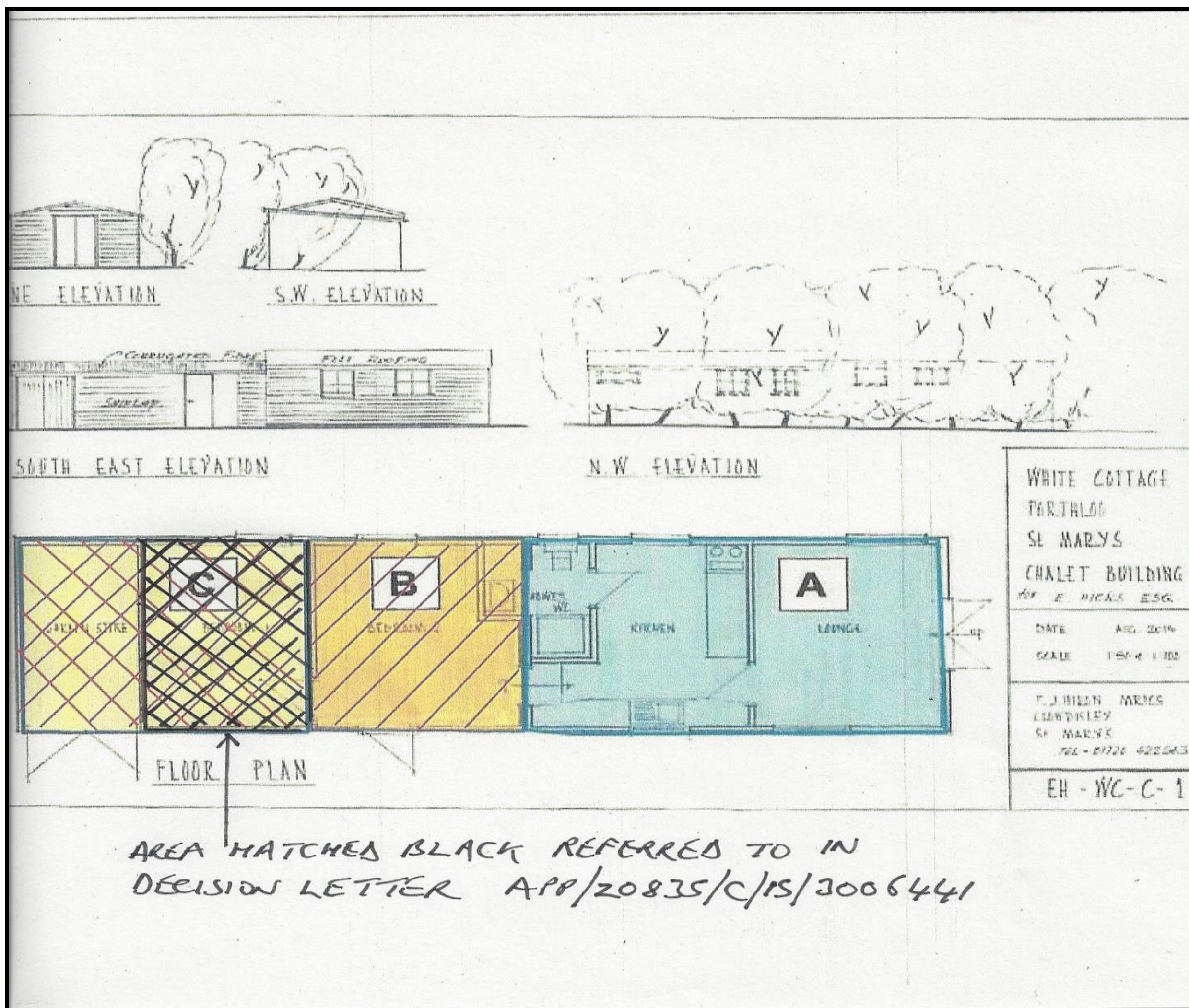
Formal decision

25. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of Section (C) (excluding the garden store) of the building known as the Chalet at The White Cottage, Porthloo, St Mary's, Isles of Scilly , TR21 0NF, as shown on the plan attached to the notice and more particularly, hatched black, on the drawing attached as an annex to this decision.

P N Jarratt

INSPECTOR

ANNEX



P N Jarratt

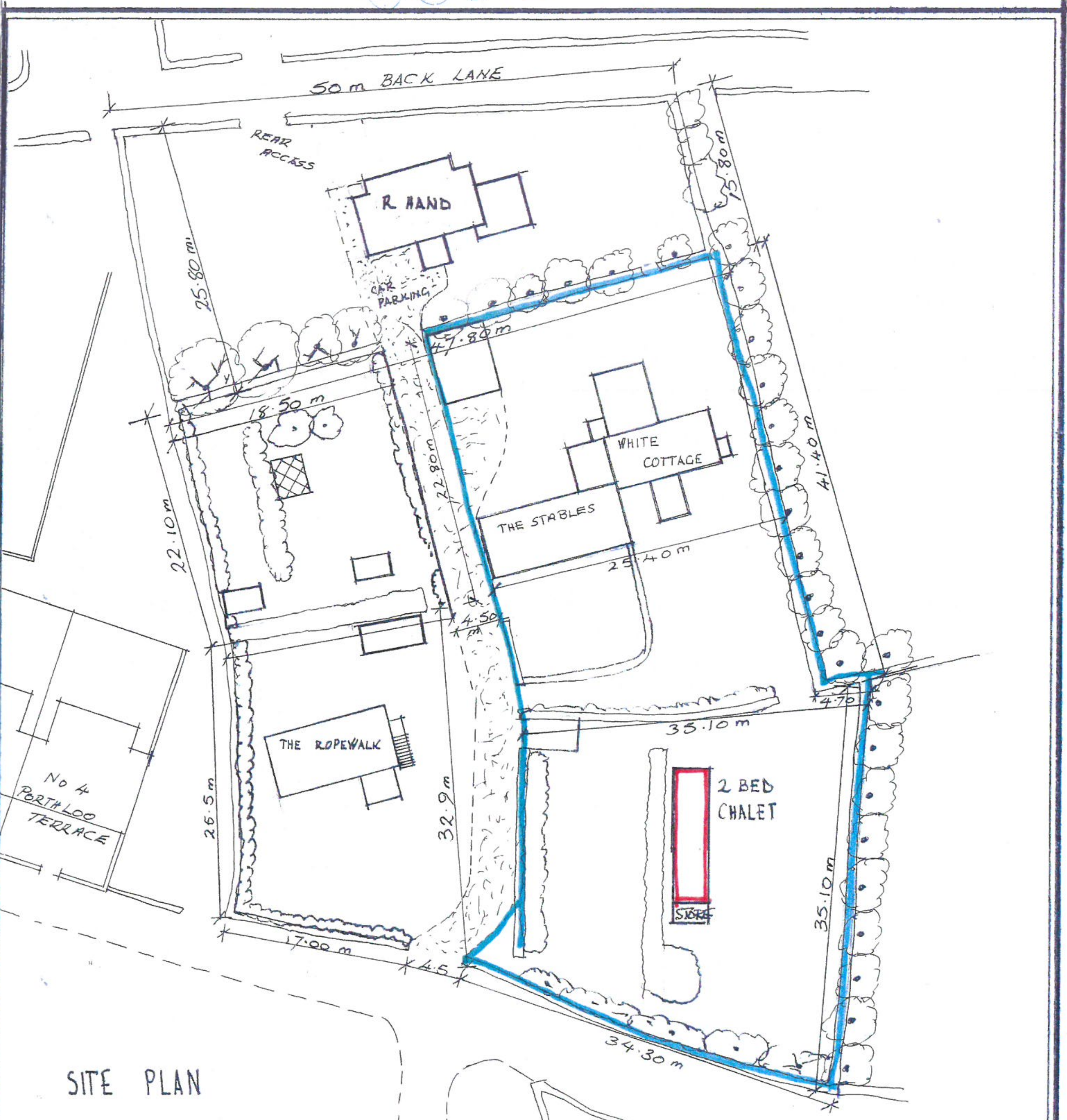
INSPECTOR

APPENDIX B

COPY

~~P-14-039~~

P-14-062



SITE PLAN

'WHITE COTTAGE'

PORTHLOO, MARYS,

ISLES of SCILLY

E. HICKS ESQ

DATE - AUG. 2014
AMENDED -
SCALE - 1:500

T. J. HIRON M.R.I.C.S
'CLOWDISLEY'
ST MARY'S TR21 0NF
TEL 01720 422563

PROJ. REF RH-PL-10 D

APPENDIX C

Neutral Citation Number: [2016] EWHC 635(Admin)

CO/4129/2015

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

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday 21 January 2016

B e f o r e:
CHARLES GEORGE QC

(Sitting as a Deputy High Court Judge)

Between:
THE QUEEN ON THE APPLICATION OF DARTFORD BOROUGH COUNCIL
Claimant
v

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
Defendant

Computer-Aided Transcript of the Stenograph Notes of
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165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

Mr Ashley Bowes (instructed by Sharpe Pritchard) appeared on behalf of the Claimant

Mr Charles Banner (instructed by Government Legal Department) appeared on behalf of the Defendant

J U D G M E N T
(Approved)
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1. DEPUTY JUDGE: This is a challenge brought by the local planning authority, Dartford Borough Council ("the council"), to a decision letter dated 29 July 2015 of an inspector appointed by the defendant, the Secretary of State for Communities and Local Government. Following an informal hearing, the Inspector allowed the appeal of the second and third defendants Mr and Mrs Beaney Snr against the council's refusal of a retrospective application for the change of use of land within the ownership of Mr and Mrs Beaney Snr at Shirehall Farm Shirehall Road, Hawley, Kent to a private gypsy and traveller caravan site comprising one mobile home and one touring caravan occupied by Mr and Mrs Beaney Jnr and their two daughters. The claim is brought under Section 288 of the Town and Country Planning Act 1990.

2. The site measures some 45 metres by 65 metres. To the south and west is open countryside as also to the north, apart from the existing farmhouse on the site, in which Mr and Mrs Beaney Snr live, and a separate garage. To the east there are some industrial units. The area in front of the house and garage has been hard-surfaced and provides parking and turning for the house.

3. <u>The Issues for the Court</u>

4. These are (1) whether the Inspector misdirected himself that the site was previously-developed land; (2) whether his reasoning in relation to previously-developed land was adequate; (3) whether the Inspector misdirected himself in finding that there were very special circumstances to justify the grant of permission for inappropriate development in the Green Belt and/or reached an irrational conclusion.

5. <u>The decision letter</u>

6. The key parts of the carefully structured decision letter are:

    i. "<u>Openness and purposes of the Green Belt and character and appearance</u>

ii. 9. The mobile home and tourer would be within the residential curtilage of Shirehall Farm. As a result there would be no encroachment into the countryside and none of the 5 purposes of the Green Belt would be infringed.

iii. .....

iv. 11. [In the light of Policy C1 of the Dartford Local Plan and paragraphs 12 and 23 of Planning Policy for Traveller Sites] the proposal should not be ruled out as a matter of principle due to its location outside of any settlement.

v. .....

vi. 14. ..... the proposal would not be intrusive or incongruous and would not harm the character and appearance of the surrounding area. As any adverse impact on the countryside would be minimised it would accord with Local Plan Policy C2. Openness would be reduced by a limited degree.

vii. .....

viii. <u>General need for and provision of traveller sites in the Borough</u>

ix. .....

x. 21. ..... there is an outstanding need for sites in the Borough ..... it is likely to be some time before general needs will be addressed. This adds further support to the immediate provision of a pitch at Shirehall Farm .....

xi. Alternatives for the appellants

xii. .....

xiii. 24. ..... there are no suitable, authorised alternative sites available to the current occupiers of the mobile home. In the event that the appeal failed and they were forced to leave it the likely outcome would be a roadside existence or an unauthorised site elsewhere ..... The absence of alternatives therefore favours the proposal ..... Requiring the mobile home to be vacated would therefore represent an interference with their home and family life.

xiv. .....

xv. 26. ..... From the evidence available the best interests of children would be served by staying at the site.

xvi. Further considerations

xvii. 27. The definition of previously-developed land in Annex 2 of the National Planning Policy Framework excludes land in built-up areas such as private residential gardens. However, the appeal site is within a rural area and as the mobile home and tourer would be located within the curtilage of developed land it should be treated as previously-developed land. In turn, the PPTS indicates that weight should be attached to the effective use of such land. There is nothing to suggest that the land was previously untidy or derelict but it is preferable for traveller sites to be located on land of this type rather than on 'greenfield' sites. I therefore give significant weight to the fact that the appeal site is previously-developed land.

xviii. 28. Policy CS20 of the Core Strategy confirms that in identifying sites to meet an agreed requirement account will be taken of the protection of the openness of the Green Belt. In the absence of other policies it is reasonable to use its criteria in the consideration of individual applications. There is no conflict with the other factors. My findings in relation to openness are set out earlier. However, given that future traveller sites are likely to be located in the Green Belt, the policy does not seek to prevent any impact on openness. In this case the consequences of a single pitch within a domestic curtilage are as about as low as they could be. Therefore whilst taking criterion c) into account there is no conflict with that development plan policy.

xix. 29. The PPTS advises that traveller sites should be sustainable

economically, socially and environmentally. Many of the factors referred to in paragraph 11 would be met. The Council does not dispute that the appeal site is within 1km of services and facilities and many other gypsy sites are further away. However, Shirehall Road is not conducive to walking so that most journeys would be likely to be undertaken by car contrary to the aim of the Framework of making the fullest possible use of public transport, walking and cycling. As such, the location of the site is neutral in the overall balance.

xx. .....

xxi. Overall balancing

xxii. 33. The proposal would be inappropriate development within the Green Belt which Policy CS13 of the Core Strategy seeks to resist. Policy S4 of the Local Plan has similar aims. According to the Framework substantial weight should be given to any harm to the Green Belt. The Written Ministerial Statements also underline that protection of the Green Belt is an explicit policy intent. In addition, there would be a limited reduction in openness. However, there would be no conflict with the purposes of the Green Belt and no harm to the character and appearance of the area subject to certain further works.

xxiii. 34. Although the general level of need for pitches in Dartford is relatively modest it does exist and policies to deal with this in the

longer term are still some way from being finalised. Similarly the provision of adequate sites is not imminent. Furthermore, there is a lack of realistic, suitable alternatives for Mr and Mrs Beaney junior and the best interests of their children would be served by staying where they are. Their personal circumstances in supporting the appellants attract limited weight. However, I give significant weight to the fact that the proposed location would be on previously-developed land and that the most directly relevant development plan policy would be met.

xxiv. 35. In the Written Ministerial Statement of July 2013 the Secretary of State makes clear that the single issue of unmet demand for traveller sites is unlikely to outweigh harm to the Green Belt so as to constitute the "very special circumstances" to justify inappropriate development in the Green Belt. This is re-emphasised in the further Statement of January 2014. However, in this case, the factors that weigh in favour of the proposal do not only relate to unmet demand for sites.

xxv. 36. In the final analysis, the other considerations clearly outweigh the totality of harm that would arise including the conflict with the broad policy aim of protecting the Green Belt. Looking at the case as a whole and having regard, in particular, to the location of the site on previously-developed land and the compliance with the policy relating to gypsies and travellers, I am satisfied that very special circumstances exist. As such a permanent permission is justified and there is no need to consider a temporary permission as discussed at the hearing or any human rights implications for the appellants.

xxvi. 37. Some representations raised concerns about precedent and regarded the appeal as a 'test case' for traveller sites in the Green Belt. I disagree with those views since the factors that I have assessed in this case are unlikely to be exactly repeated elsewhere ..... "

7. Finally, in allowing the appeal and granting permission, the Inspector imposed conditions to limit the visual impact, the number of caravans, the siting of the mobile home, the extent of the pitches and the size of the vehicles to be kept on site.

8. The National Planning Policy Framework (NPPF)

9. The Core planning principles in paragraph 17 include -

- take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting rural communities within it;

- encourage the effective use of and by re-using land which has been previously developed (brownfield land) provided that it is not of high environmental value.

10. Included in the provision of housing section are:

i. "48. ..... Any allowance [for windfall sites] should be realistic having regard to the Strategic Housing Land Availability Assessment ..... and should not include residential gardens.

ii. .....

iii. 53. Local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.

iv. .....

v. 55. To promote sustainable development in rural areas, housing should be located where it will enhance ..... the vitality of rural communities ..... "

11. The five purposes of the Green Belt are set out in paragraph 80. These are:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

12. Development control policy in the Green Belt is contained in two paragraphs:

i. "87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

ii. 88. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. "Very special circumstances" will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly

iii. outweighed by other considerations."

13. Then,

14. "Conserving and enhancing the natural environment

i. 111. Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value ..... "

15. The Glossary to the NPPF includes:

i. "**Previously-developed land**: Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and

land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time."

16. Planning Policy for Traveller Sites (CLG, 2012) ("PPTS")

17. The relevant paragraphs are -

i. "1. This document sets out the Government's planning policy for traveller sites. It should be read in conjunction with the National Planning Policy Framework .....

ii. .....

iii. 14. When assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community.

iv. .....

v. 25. Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.

vi. 26. When considering applications, local planning authorities should attach weight to the following matters:

   a) effective use of previously-developed (brownfield) untidy or derelict land;

vii. ..... "

18. Policy CS20 of the Dartford Core Strategy 2011

19. Headed "Gypsies and Travellers" and described in paragraph 35 of the decision letter as "the most directly relevant Development Plan Policy", the relevant part provides:

i. "1. The Council will work with Kent authorities to agree a sub-regional distribution of traveller and travelling showpersons pitches. In identifying sites to meet an agreed requirement, the Council will take into account:

   a) Impact of proposed pitch provision on adjacent residential communities;

   b) Accessibility of a proposed location to educational, health, community facilities

ii. and public transport;

iii. c) Protection of the openness of the Green Belt;

iv. d) The availability and delivery of sites;

v. e) Other planning constraints, including flood risk."

20. Issue 1

21. There are a number of matters of common ground between the parties: (1) that the appeal site is not part of the built-up area but rather forms part of the countryside, and therefore subject to countryside policies; (2) that the mobile home and touring caravan would be located within the curtilage of developed land, that is in the curtilage of the farm house at Shirehall Farm; (3) that the Inspector's finding in paragraph 27 of the decision letter that the appeal site should be treated as previously-developed land turned on two matters, that it was in the curtilage of developed land and that since it was not in a built-up area the appeal site was not excluded as a private residential garden. This last matter turned on his interpretation of the phrase in the Glossary to the NPPF that "land in built-up areas such as private residential gardens ....." is excluded from the definition of previously-developed land; (4) that the wording of the exclusion of private residential gardens from previously-developed land in the Glossary to the NPPF is almost identical to that in Planning Policy Statement 3: Housing (PPS3) 2010, re-issued 2011, where the exclusion is also prefaced by the words "in built-up areas"; (5) that the Inspector's interpretation of the definition of previously-developed land to include private residential gardens in non-built-up areas went on to play a major part in the reasoning (in paragraphs 34 and 36 of the decision letter) for allowing the appeal, so that if the Inspector's interpretation was wrong the decision would have to be quashed.

22. The claimant's submissions

23. For the claimant, Mr Bowes's first argument is that, read entirely on its own, there is nothing in the definition of previously-developed land in the Glossary to the NPPF to require that only private residential gardens in built-up areas are excluded. Private residential gardens (and parks, recreation grounds and allotments) are primarily found in built-up areas, and the reference to "land in built-up areas" can and should be read as no more than an acknowledgement of that. Thus, private residential gardens in non-built-up areas are also excluded from the definition.

24. If the first argument were not to succeed, Mr Bowes's second argument was that the same broad interpretation of the exclusion can be reached by reading the definition in the Glossary to the NPPF in the light of paragraphs 45 and 53 of the same document, both of which referred to residential gardens, but without any differentiation between those in built-up areas and those in the countryside.

25. This second argument was further bolstered by the wording of a Written Ministerial Statement in the House of Commons on 9 June 2010, in which the Minister explained the Policy ambition to remove residential gardens from the ambit of previously-developed land so as to prevent the phenomenon of "garden grabbing"; and a circular letter to local planning authorities from the chief planning officer of 15 June 2010 in like terms.

26. Third, argued Mr Bowes, given the planning implications of land being classified as previously-developed land (see in this case paragraph 111 of the NPPF and paragraph 24 a) of the PPTS), there was no sensible reason for the Government to differentiate between private residential gardens in built-up areas and those in the countryside. This supported the wider interpretation of the exclusion and the narrower definition of previously-developed land.

27. Fourthly, bearing in mind the observation of Sullivan LJ in Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government [2014] EWCA Civ 1386, paragraph 16, that where the Government seeks to effect a change in national planning policy it is reasonable to expect a "clear statement to that effect", and Eady J's holding in Dartford Borough Council v Secretary of State for Communities and Local Government [2012] EWHC 634 (Admin), paragraph 23, that the changed definition of

previously-developed land was not confined to small or intensively used gardens, but to all gardens, the definition in both planning documents of previously-developed land should be read to exclude all private residential land, whether or not in a built-up area.

28. In the second sentence of paragraph 27 of the decision letter the Inspector had regarded the appeal site as previously-developed land because it was "within a rural area" and not within a built-up area. That was to misconstrue the current definition of previously developed land.

29. <u>Submissions of the defendant</u>

30. For the defendant, Mr Banner contends that the words "land in built-up areas" in the definition of "previously-developed land" in the Glossary to the NPPF and in PPS3 cannot simply be ignored. Mr Bowes's construction meant either omitting the words "in built-up areas" or writing in words which were not there. That was impermissible. As Richards LJ said in <u>Timmins v Gedling Borough Council</u> [2015] EWCA Civ 10; [2015] 2 P & CR 12, paragraph 14, in relation to the NPPF -

    i. "24 ..... Policy statements of this kind should be interpreted objectively in accordance with the language used ..... "

31. It was wrong to use other passages in the NPPF to force an artificial interpretation on the definition in the Glossary. It was the Glossary which was the interpretation provision. In any case, paragraphs 48 and 53 were not dealing with previously-developed land and did not compel an artificial interpretation of the definition in the Glossary. The Ministerial Statement and the chief planning officer's circular letter were issued in the context of, and with express cross-reference to, PPS3 (2010) which, in its definition of previously-developed land, differentiated between gardens etc in built-up areas and those which were not so situated. Therefore, the Ministerial Statement and the chief planning officer's letter did not assist Mr Bowes.

32. There was no anomaly. The objectively ascertained intention by the exclusion of private

residential gardens from the definition of previously-developed land was to address concerns about "garden grabbing" in suburban or urban areas, where green space is more limited than elsewhere. Redhill concerned an entirely different situation where an attempt was being made to read down a provision, rather than (as here) to delete express wording in a definition. In Dartford, the court had been considering a private residential garden in a built-up area and anything said there had no relevance to the arguments now advanced by the claimant.

33. In the NPPF there were numerous policies distinguishing between built-up areas and the countryside, for example paragraphs 17, 55 and 80. The approach to previously-developed land was not inconsistent, especially given the fall-back of paragraph 53 (which was available in rural areas as well as built-up areas).

34. The appeal site was not within the built-up area but within the countryside. As a result, the Inspector rightly concluded in paragraph 27 of the decision letter that the exclusion did not apply.

35. Conclusion on Issue 1

36. Mr Banner is plainly right and Mr Bowes plainly wrong. It is impossible to read the definition of previously-developed land in the two Policy documents in such a way as to exclude from it private residential gardens which are not in built-up areas. To do so is to contradict the clear words used in the definition.

37. The exclusion of residential gardens in build-up areas has a rational explanation in that "garden grabbing" is a particular (and some feel undesirable) phenomenon of built-up areas. The observation of Sullivan LJ in Redhill, at paragraph 16, commented upon and distinguished by Richards LJ in Timmins, paragraph 28, does not give carte blanche to disregard the express words of a definition in a policy document.

38. The reasoning of Eady J in Dartford does not assist Mr Bowes. Eady J uncontroversially found at paragraph 21 that the exclusion of residential gardens from the definition of previously-developed land related to "garden grabbing", and in paragraph 23 that there was nothing "to support the notion that it would only be small and intensively used

gardens that should not be 'grabbed'". The issue now raised by Mr Bowes simply did not arise.

39. If the wording of the exclusion in the definition of previously-developed land is due to an oversight (and there is no evidence of this) or, whilst intended, is now thought to have undesirable consequences, then the remedy lies with the Minister to widen the exemption and narrow the scope of previously-developed land. That is not a task for the court (see Timmins, paragraph 28).

40. The challenge on Issue 1 fails.

41. Issue 2

42. Submissions Of the Claimant

43. Mr Bowes here takes issue with another aspect of the second sentence of paragraph 27 of the decision letter, namely the reference to the mobile home and touring caravan being located within the curtilage of developed land. He agrees that the appeal site did include this curtilage and that the mobile home and touring caravan were being permitted to remain on it, but he questions how the Inspector has approached the bracketed phrase in the Glossary's definition of previously-developed land "(although it should not be assumed that the whole of the curtilage should be developed)". Mr Bowes says that in granting permission the Inspector seems to have assumed that the whole of the curtilage of Shirehall Farm "should be developed", without explaining why.

44. As a new point not previously raised, he referred to the absence of any condition attached to the planning permission removing permitted development rights at Shirehall Farm, and

the risk that the planning permission would now lead to additional development taking place under the Town and Country Planning (General Permitted Development) (England) Order 2015. He referred to Schedule 2 Part 1 (Class F) (which permits hard surfacing) and Part 2 (Class A) (gate, fence, wall or other means of enclosure).

45. Submissions of the defendant

46. Mr Banner considers that the point simply does not arise. There is no basis for the allegation that the Inspector assumed the whole curtilage should be developed. Indeed, the conditions he imposed relating to the siting of the mobile home and the extent of the pitch area of the mobile home and touring caravan to include hardstanding, parking and amenity areas showed that he made no assumption.

47. There had been no suggestion at the hearing that the Inspector should impose a condition limiting permitted development rights; and this matter was not therefore an issue on which he should be expected to have given consideration in the decision letter. Permitted development rights under Part 1 (Class F) only applied to the householder, that is to Mr and Mrs Beaney Snr, and not to the occupiers of the mobile home and tourer. Therefore, the position was unchanged as a result of the appeal permission. Any permitted development rights that would accrue to Mr and Mrs Beaney Jnr as occupiers under Part 1 (Class A) were trivial, since, in any event, Mr and Mrs Beaney Snr had those same rights. The only fence that the occupiers of the mobile home were likely to want was one between it and the farmhouse, where that was already the subject of a specific condition in the planning permission providing for replacement of the existing fence.

48. Conclusion on Issue 2

49. There is no basis to find that the Inspector has assumed that the whole curtilage should be developed. The conditions imposed strongly suggest that he has not done so. There is nothing of substance in the new points relating to permitted development rights.

50. The reasons given by the Inspector for his decision in relation to previously-developed land are intelligible and adequate so as to enable the reader to understand why the matter was decided as it was and what conclusions were reached on the important controversial

issues (see South Buckinghamshire District Council v Porter (No 2) 2004 UKHL 33; [2004] 1 WLR 1953, paragraph 36). This is not a case where the local planning authority is substantially prejudiced because the planning considerations on which the decision was based were not explained sufficiently clearly to explain what, if any, impact they may have in relation to the decision on future applications (see Save Britain's Heritage v No 1 Poultry Ltd [1991] 1 WLR 153,167.)

51. Accordingly, this ground must fail.

52. Issue 3

53. Submissions of claimant

54. Mr Bowes claims that the decision letter errs in its approach to "very specific circumstances" in three respects. First, there was an error of law in treating compliance with Policy CS20 of the Core Strategy as capable of contributing to the very special circumstances required for development in the Green Belt to take place by, amongst other policies, paragraph 87 of the NPPF. This is what the Inspector did in paragraph 36 of the decision letter. Second, if Mr Bowes were wrong on this, more reasoning was needed to explain why this compliance could so contribute. Third, and in any event, the Inspector's decision that there were very special circumstances to justify the development was irrational. The first two matters, but not the rationality challenge, were confined to Policy CS20.

55. On the first aspect Mr Bowes's oral submissions contained two strands. The first was that, properly construed, the decision in R (Wychavon District Council) v Secretary of State for Communities and Local Government [2008] EWCA Civ 692; [2009] 1 P & CR 15 (which was in fact, like the present claim, a Section 288 application and not a judicial review contrary to what the reported case name would suggest) supported the view that

the circumstances had to be very special on their own, as distinguishable from being of sufficient strength to justify an exception to Green Belt policy.

56. The second strand was that a proper direction on very special circumstances must "go beyond satisfaction of ..... development control policies": R (Lee Valley Regional Park Authority) v Broxbourne Borough Council [2015] EWHC 185 (Admin), paragraph 71.

57. Applied to the facts of this case, the Inspector was entitled to pay regard to Policy CS20, even though it was a policy on site allocation rather than development control. Nevertheless, the mere fact that the application accorded with "the most directly relevant development plan policy" (see paragraphs 28 and 34 of the decision letter) was incapable of contributing to a finding of very special circumstances.

58. Mr Bowes said that there was a real danger otherwise that proposed development in the Green Belt which accorded with other policies in the Development Plan would be held, on that account, to be permissible because justified by very special circumstances.

59. If he were right on this head then there was no alternative to quashing since one of the two particular and principal matters to which the Inspector had regard in finding very special circumstances was "compliance with the policy related to gypsies and travellers" (see paragraph 36 of the decision letter).

60. If he were wrong on this head, and there could be circumstances where accordance with a policy such as CS20 could contribute to very special circumstances, then more reasoning was needed as to why this was so as had been the case on the facts of Lee Valley, paragraph 71, where the challenge on this head had failed. Absent such reasoning, the local planning authority was prejudiced in its role in relation to other sites.

61. On the third aspect Mr Bowes realised the heavy burden on him to show irrationality. Nevertheless, he drew attention to the way in which the decision in R (Chelmsford Borough Council) v First Secretary of State [2003] EWHC (Admin), [2004] 2 P & CR 34, had been analysed in Wychavon (paragraph 27). The conclusion that the circumstances in this appeal amounted to very special circumstances was a conclusion that no reasonable inspector could have reached in accordance with paragraphs 87 to 88

of the NPPF.

62. Submissions of defendant

63. Mr Banner did not argue that the decision could be saved if any of these three related submissions were to succeed.

64. There was no reason why compliance with Policy CS20 should not be one of the matters which together made up a composite bundle of very special circumstances which was found clearly to outweigh the harm. This was particularly so in circumstances where (a) in the local planning authority's area there was "an outstanding need for sites" (paragraph 21 of the decision letter); (b) "future traveller sites [identified by the local planning authority to meet the need] are likely to be located in the Green Belt" (paragraph 28 of the decision letter); (c) CS20 "does not seek to prevent any impact on openness" and in this case "openness would be reduced by a limited degree" (paragraphs 28 and 14 of the decision letter); (d) "in this case the consequences of a single pitch within a domestic curtilage are about as low as they could be" (paragraph 28 of the decision letter); and (e) "the factors ..... in this case are unlikely to be repeated elsewhere" (paragraph 37 of the decision letter). Thus, there were special factors which explain why the compliance with CS20 was of particular relevance in this case. That was enough to render it capable of being part of the composite bundle.

65. The reasoning in Wychavon, paragraph 26, showed that the factors which make a case very special could be the same or at least overlap with those which justify holding that Green Belt considerations are clearly outweighed, any rigid division between the two sets of factors not being required.

66. The facts of Lee Valley were distinguishable. There, the only factor relied upon as a very special circumstance was a design issue. Even so, given the treatment which had been given to that matter in the officer's report, the challenge on that head failed (see paragraph 71). Here, the Inspector did not suggest that compliance with CS20 was sufficient on its own to constitute very special circumstances.

67. The argument on lack of adequate reasons lacked merit since the Inspector clearly

explained the relevance of CS20 to his decision.

68. The irrationality challenge was hopeless. It was within the range of reasonable planning judgments for the Inspector to accord the bundle of considerations sufficient weight that they clearly outweighed the harm so as to justify the conclusion that very special circumstances existed.

69. Conclusion on Issue 3

70. I accept Mr Banner's contentions that reference to Wychavon and Lee Valley are of no assistance to the claimant. The Inspector plainly had the reasoning in Wychavon in mind in the way he worded his decision letter.

71. This was not a case where mere compliance with other development control policies was claimed to constitute very special circumstances. The Inspector was clearly finding that a search for alternative gypsy sites was unlikely to yield a site with so few adverse consequences as in the present case (see paragraph 28 of the decision letter) and which accorded in so many respects with the allocation policy CS20. If that had stood on its own it might well have been capable of constituting very special circumstances justifying this development. I do not have to decide that point. But I can see no reason whatever why this policy compliance should not form part and indeed a particular part in the constitution of the bundle of circumstances found to be very special. That is enough to dispose of the first aspect of Issue 3.

72. The reasons challenge under issue 3 was initially expressed differently in the Grounds where the allegation went wider than policy CS20 and it was claimed that "the Inspector's reasons as to why very special circumstances existed were inadequate". Mr Bowes was wise to abandon that claim because the Inspector's reasons as a whole are very clearly reasoned and explained. The challenge is however no better when confined to the reasoning in relation to CS20. The Inspector has adequately explained why he took CS20 into account in the appellants' favour and why he placed reliance on it along with other matters in finding that very special circumstances existed to justify the development in the Green Belt. There is no failure or inadequacy of reasoning in the decision letter to

embarrass the council in dealing with future development control decisions. In particular, the Inspector has found that the factors which he assessed which included the unusual extent of compliance with CS20 were unlikely to be exactly repeated elsewhere (paragraph 37 of the decision letter). Whilst factors in planning applications are seldom "exactly repeated", the local planning authority should have no difficulty in drawing appropriate lessons from this appeal decision for application in other cases.

73. The rationality challenge is most surprising. I set out the way in which it was pleaded in paragraph 27 of the grounds:

> i. "The Inspector's conclusion at DL, 33 to 36, in a nutshell, is that the site's compliance with the site allocation selection criteria within CS20 Core Strategy 2011, the moderate shortfall of sites, the lack of alternatives, the limited weight attached to personal circumstances, and the fact that the land fell within what the Inspector understood as being previously-developed land, amounted collectively to 'very special circumstances', even assuming the Inspector had been correct to treat the site as previously developed, the circumstances relied upon cannot reasonably be said to be 'very special'."

74. Mr Bowes confirmed in oral argument that if he were wrong on Issue 1 he did not deny that the fact that the land fell within the definition of previously-developed land was a matter capable of going into the bundle of considerations which were eventually held to be very special. None of the other matters in my view was irrationally included in that bundle. There was in my opinion no overall irrationality. Given the bundle of factors, the facts and findings in this case are readily distinguishable from those in, for example, Chelmsford, which is why the factors in that case could be described as "unremarkable" (see Wychavon, paragraph 27). That in no way assists the claimant here.

75. Accordingly, the claim in respect of Issue 3 must also fail.

76. Disposal

77. Despite the clarity of Mr Bowes' presentation of the council's case, the application to quash is dismissed on all grounds.

78. MR BANNER: My Lord, thank you very much for that judgment. There are a few consequential matters. The first one is a small point. On a few occasions, if I heard it correctly, when Policy CS20 of the Core Strategy was referred to it came out as C20 (without the S).

79. DEPUTY JUDGE: That is helpful. The shorthand writer will note that we are dealing with CS20.

80. MR BANNER: I am also told that there were references to an Inquiry which ought to be to a hearing because the hearing procedure was used as well.

81. DEPUTY JUDGE: I said in the fourth line "following an informal hearing". I will bear that in mind.

82. MR BANNER: My friend says it was and I have no reason to doubt him.

83. The next thing that follows is an application for costs. Perhaps I may deal first with the principle. I simply rely on the principle that costs follow the event. I have won on all grounds and therefore my client is entitled to his costs.

84. DEPUTY JUDGE: I do not suppose, Mr Bowes, that that can be opposed, can it?

85. MR BOWES: It cannot. I do have two very small matters.

86. DEPUTY JUDGE: The next matter is to turn to your costs schedule which I have.

87. MR BANNER: The total claim - we have not included today's costs and I do not claim, add those - is £6,812 which is a little less than the costs the claimant would have claimed

had it been successful. I simply say at this stage that is a reasonable and proportionate amount for a claim of this nature. I think my friend has a couple of small points.

88. DEPUTY JUDGE: Mr Bowes, you have some submissions.

89. MR BOWES: There are two matters. The first is that my Lord will note that there is multiplicity of fee earners incurred in this case. First, section 3, Grade 7 fee earners £160 an hour.

90. DEPUTY JUDGE: I think that is done so that the £200 is very seldom charged and most of the work is done by those who charge the lesser fee rates. I think in most of these cases that is intended to benefit you rather than otherwise. Instead of simply getting Gary Howard and Clare Jones to do all the work, the others have been used. You say there is an excessive number.

91. MR BOWES: We say there must be some overlap between those three individuals. I see no reason why the council should bear that. The second point is a short point over the page. You will see attendance on others: counsel, court, co-defendant etc. The first category: personal attendances.

92. DEPUTY JUDGE: Which page am I on?

93. MR BOWES: Page 2, personal attendances: 3.7 hours at £160 an hour, £592. I have had the benefit of discussing this with my friend. He confirms that is not conference with him as counsel. Therefore, in my submission - - - - -

94. DEPUTY JUDGE: It is not what?

95. MR BOWES: It is not a conference with my friend, conference with counsel. It is therefore attendance on somebody else. We say that is awfully high for a straightforward 288 claim. Therefore, what flows from that is that we invite the court to summarily assess costs in the quantum of £6,000.

96. DEPUTY JUDGE: What you say is that something should come off the 6,812?

97. MR BOWES: Yes.

98. DEPUTY JUDGE: You do not say precisely how much.

99. MR BOWES: We would invite the court to summarily assess at 6,000.

100. DEPUTY JUDGE: You would be content at 6,000.

101. MR BOWES: Yes.

102. DEPUTY JUDGE: Has that point previously been notified to Mr Banner or was that new to him?

103. MR BOWES: No. It was new to him this morning. I took instructions on it.

104. DEPUTY JUDGE: Mr Banner, what do you say on those two points?

105. MR BANNER: On those two points, if I may deal with the multiplicity of fee earners first. Mr Lord summarises the point very accurately, if I may say so, that the division of labour is intended to save costs rather than add to them. Principally the costs were done by the mid-ranging fee earners subject to the supervision of the higher-earning fee earners where appropriate, and where tasks could be delegated to the more junior solicitor that was done. That was very sensible and reduced costs. As to the fact that there were - - - - -

106. DEPUTY JUDGE: I am just looking through. Where is the £200 ever claimed?

107. MR BANNER: It may not even be on the facts of this case.

108. DEPUTY JUDGE: I am just looking. Page 1, the only reference is to £160.

109. MR BANNER: It is in the schedule. If you go to the very final page - where the work done on documents which then feeds its way through into the form - there is a small amount, in fact barely over one hour, of work done by the more senior lawyers.

110. DEPUTY JUDGE: Where do I find that?

111. MR BANNER: You should have the spreadsheet.

112. DEPUTY JUDGE: I have the spreadsheet.

113. MR BANNER: Do you see "A hours"?

114. DEPUTY JUDGE: Yes.

115. MR BANNER: "A hours". There is 1.2 hours. A is grade A.

116. DEPUTY JUDGE: A is grade A. I have got it.

117. MR BANNER: That is how I understand it anyway.

118. DEPUTY JUDGE: We have a total of 1.2 hours. Of the entire claim, only 1.2 is being claimed at the £200 rate.

119. MR BANNER: That is correct. In my submission it is reasonable for the Secretary of State to have his more senior lawyers keep an eye on - a degree of scrutiny - material that goes out in his name. There is no excess here.

120. As to the fact that there were multiple grade B (£160 an hour lawyers), there was no overlap. I can certainly speak for the division of labour between Mr Torru and Miss Fern because when I prepared my skeleton argument between Christmas and the New Year Mr Torru was away and he had arranged for Miss Fern to receive my skeleton argument, pass it to material clients and to obtain those clients' instructions and then correspond with me. So there was no overlap there. It was simply to cover the absences from time to time of particular individuals.

121. DEPUTY JUDGE: What do you say about the other point raised which is the excessive number of personal attendances - 3.7?

122. MR BANNER: Unfortunately, all I can do is speculate because despite the fact that my friend and his clients have had their schedules since the beginning of this week, these points were only put to me this morning. My instructing solicitor is in the Court of Appeal at the moment. I can only speculate. What I can say is that specific instructions

were taken from the Inspector. I had the benefit of a note from the Inspector at the outset of these proceedings to inform me of various points. Some of the documents in this case produced by my client were filed at court by the Government Legal Department as opposed to by my clerks. Either or both of those may have been within that. There may have been other quite legitimate things but I simply do not know.

123. DEPUTY JUDGE: Does filing at court count as personal attendances?

124. MR BANNER: I think it probably would do because it is attendance on others, including court, so turning up at court with a document would appear to fall within that. I am put in a difficult position by this point being raised only at the last minute this morning.

125. What I would say by way of a higher-level observation is that - contrary to what my friend suggested - it is not an obviously egregious amount of time to spend on attendances in a claim of this nature. There are a significant number of attendances in the claimant's statement of costs amounting to some £450 which are not grossly dissimilar to the amount claimed by my client. In my submission there is nothing overtly untoward that justifies suggesting that the time claimed is not reasonable and nor is it disproportionate, either individually or in terms of its effect. Rounded down, my friend suggests 6,000 which is, in fact, greater than the sum claimed for those attendances in any event.

126. That is all I can say on the matter.

127. DEPUTY JUDGE: I think he was suggesting that you rounded it down, that dealt with the two matters which he was raising broadly.

128. MR BANNER: What I would say also, again by way of interesting observation of my friend's client's costs, is that there were three different fee earners referred to in their statement of costs too. So the council must accept the principle of an appropriate division of labour between more expensive, more senior lawyers, mid-ranking lawyers and junior lawyers depending upon the nature of the task in hand. One sees that in the description of fee earners at the top of the page.

129. DEPUTY JUDGE: It is slightly unusual - this case - in that the claimant's costs only slightly exceed the defendant's costs whereas claimant's costs usually very considerably exceed defendant's costs partly because they do not have the economies which a local authority conducts because they have the primary burden of presenting the case and that usually, therefore, inflates the costs. It is commendable in this case that their costs have been kept low. Mr Bowes, is there anything more you want to say on the matter?

130. MR BOWES: No. It is in the hands of my Lord to summarily assess the matter and so I invite my Lord to do.

131. Ruling on Costs

132. DEPUTY JUDGE: I have heard the arguments on this matter. There is no justification for saying that the Treasury Solicitor had involved too many people or too much time by a grade A fee earner, it being clear that only 1.2 hours has been done by a grade A fee earner and it being plain from the claimant's own schedule that in their case three solicitors were involved at different rates of pay, including one at £300 an hour which was much higher than any rate of pay charged by the Treasury Solicitor.

133. So far as the suggestion that the 3.7 hours for personal attendances on others was excessive, that had been raised very much at the last moment when this statement has been available for several days and was provided before the hearing on Wednesday of this week. I am simply not in a position to say that it was an unreasonable or disproportionate amount.

134. Accordingly, I decline to reduce the amount and I summarily assess the costs in the total claim which is £6,812.

135. Are there any other matters arising?

136. MR BOWES: There is one application, and that is to seek from my Lord permission to appeal. It has two strands, this application. It relates to Ground 1. The first strand is that there is a reasonable, compelling prospect of success, and that is that

notwithstanding my Lord found that there was a rational explanation for a distinction between land in a built-up area and land not in a built-up area when safeguarding the phenomena of "garden grabbing", that in my submission does not reveal itself from the contemporaneous policy statements of the Department or the Department's (Inaudible).

137. My second point that arises from that is that my Lord has not given effect to the intention of the Minister in producing these amendments. That intention was clear, and it is proper, as I think my Lord accepted, to read Policy Statements in the context of their intention.

138. On that basis I seek permission to appeal on the basis that it has a reasonable, good, prospect of success.

139. The second basis on which permission to appeal is sought is that there is a compelling argument, compelling reason, that the Court of Appeal hear this argument in that it is a matter of acute public interest - the status of residential gardens - in that there is a significant difference in the planning system as to how brownfield and greenfield are treated identified within my Lord's judgment and, secondly, as demonstrated from the Minister's Statement himself, taking the trouble to draw this matter to the attention of the House of Commons.

140. On those two bases I respectfully seek from my Lord permission to appeal.

141. Ruling on Permission to Appeal

142. DEPUTY JUDGE: So far as the first ground is concerned, I do not consider that there is a reasonable prospect of success.

143. So far as the second ground, I do not consider that that is a compelling reason for the Court of Appeal to consider it. But of course if application is made to the Court of Appeal for permission they will have the opportunity, if they see fit and if they were to feel that there were not grounds on the first matter but that there were on that matter, to grant leave on that matter on the grounds of that consideration.

144. Accordingly, I refuse leave.

145. I think that as this has been a read-out judgment, your time for appealing should not begin to run until there is issued the perfected transcript. (Pause) I may get it next week but then I have to turn it around so there may be a delay. Accordingly, your time for appeal will not start until you receive that. I do not think, Mr Banner, that is going to prejudice anyone in any way.

146. MR BANNER: I did have in mind there are some people, the beneficiaries of the planning permission, who will want to agree finality but it sounds like it is not going to be a delay of months as opposed to days.

147. DEPUTY JUDGE: In any event, they are living in the caravan there so I do not think it is going to make too much difference to them, the extra time.

148. MR BOWES: I am grateful to you. You anticipated my further application.

149. DEPUTY JUDGE: I am grateful to both counsel and of course those behind you for the way the case has been prepared and presented. We got through it very speedily earlier this week.

APPENDIX D

Neutral Citation Number: [2016] EWCA Civ 168

Case No: C1/2015/0583 and C1/2015/0894

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MR JUSTICE SUPPERSTONE [2015] EWHC 132 (Admin)
MRS JUSTICE LANG [2015] EWHC 410 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 March 2016

Before:

Lord Justice Jackson
Lord Justice Vos
and
Lord Justice Lindblom

- - - - - - - - - - - - - - - - - - - -

Between:

Suffolk Coastal District Council	**Appellant**
- and -	
Hopkins Homes Limited	**Respondent**
- and -	
Secretary of State for Communities and Local Government	**Interested Party**

Richborough Estates Partnership LLP	**Appellant**
- and -	
Cheshire East Borough Council	**First Respondent**
- and -	
Secretary of State for Communities and Local Government	**Second Respondent**

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Mr Jonathan Clay and Dr Ashley Bowes (instructed by **Sharpe Pritchard**) for the **Appellant**
Mr Christopher Lockhart-Mummery Q.C. (instructed by **DLA Piper**) for the **Respondent**
Mr Hereward Phillpot Q.C. and Mr Richard Honey (instructed by **the Government Legal Department**) for the **Interested Party**

Mr Christopher Young and Mr James Corbet Burcher (instructed by **Gateley Plc**) for the **Appellant**
Mr Anthony Crean Q.C. and Mr John Hunter (instructed by **Sharpe Pritchard**) for the **First Respondent**
Mr Hereward Phillpot Q.C. and Mr Richard Honey (instructed by **the Government Legal Department**) for the **Second Respondent**

Hearing dates: 14 and 15 January 2016

- -

Judgment Approved by the court for handing down

Lord Justice Lindblom:

Introduction

1. This is the judgment of the court.

2. These two conjoined appeals concern the meaning and effect of government policy in paragraph 49 of the National Planning Policy Framework ("the NPPF"). In particular, they concern the meaning of the requirement in the policy that "[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", and the way in which the policy is to be applied in the making of planning decisions. These questions have been considered several times at first instance without entirely consistent results, but not until now by this court. In both of these cases permission to appeal was granted by Sullivan L.J.. As he acknowledged when granting permission, the wider importance of the issues raised by the appeals is a compelling reason for them to be decided by this court. All counsel who have appeared before us echo that view, and urge us to bring much needed clarity to the meaning of the policy. The benefit of this for local planning authorities, developers and local communities will be obvious.

The two appeals

3. In the first case the appellant is a local planning authority, Suffolk Coastal District Council. In September 2013 the district council refused planning permission for a development of 26 houses on land at Old High Road in Yoxford. The applicant for planning permission was Hopkins Homes Ltd.. Their appeal against the district council's decision was dismissed by an inspector appointed by the Secretary of State for Communities and Local Government, after an inquiry in February and June 2014. The inspector's decision letter is dated 15 July 2014. Hopkins Homes challenged the decision by an application under section 288 of the Town and Country Planning Act 1990. The challenge succeeded before Supperstone J., who on 30 January 2015 quashed the inspector's decision. Supperstone J.'s order is the subject of the district council's appeal before us. At first instance the Secretary of State did not seek to defend the inspector's decision, having conceded that the inspector had misunderstood and misapplied the policy in paragraph 49. Before us counsel for the Secretary of State have made submissions in support of Supperstone J.'s conclusions on the status of the disputed development plan policies in that case, though not on the other matters in dispute between the district council and Hopkins Homes.

4. In the second case the appellant is a developer, Richborough Estates Partnership LLP. In August 2013 it made an application for outline planning permission to Cheshire East Borough Council for a development of up to 170 houses on land north of Moorfields in Willaston. The borough council failed to determine the application within the prescribed period. Richborough Estates appealed to the Secretary of State. Its appeal was heard by an inspector at an inquiry in June 2014. In a decision letter dated 1 August 2014 the inspector allowed the appeal and granted planning permission for up to 146 dwellings. His decision was challenged

by the borough council. That challenge succeeded before Lang J., who quashed the inspector's decision by an order dated 25 February 2015. The appeal against that order was made not by the Secretary of State but by Richborough Estates. By a respondent's notice the borough council invited this court to uphold Lang J.'s order for additional reasons, but at the hearing it abandoned that position. Submissions were made to us on behalf of the Secretary of State supporting the argument put forward for Richborough Estates.

5. In both cases the inspector had to establish whether particular policies of the development plan relevant to the proposal were not to be considered "up-to-date" under the policy in paragraph 49 of the NPPF, and, if so, what the consequences for his decision should be.

The NPPF

6. The NPPF, published on 27 March 2012, contains national planning policy for England.

7. In the "Ministerial foreword" the Minister for Planning declared that "[the] purpose of planning is to help to achieve sustainable development". "Sustainable", he said, "means ensuring that better lives for ourselves don't mean worse lives for future generations", and "Development means growth", one aspect of which is that "[we] must house a rising population, which is living longer and wants to make new choices". He went on to say:

> "Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision. …".

8. The "Ministerial foreword" concludes by stating that "[by] replacing over a thousand pages of national policy with around fifty, written simply and clearly, we are allowing people and communities back into planning". Some judicial doubt has been expressed about that assertion. As Sullivan L.J. said in *Redhill Aerodrome Ltd. v Secretary of State for Communities and Local Government* [2015] 1 P. & C.R. 3 (in paragraph 22 of his judgment, with which Tomlinson and Lewison L.JJ. agreed), "[views] may differ as to whether simplicity and clarity have always been achieved, but the policies are certainly shorter". In an earlier case in which this court had to consider the meaning of the policy in paragraph 47 of the NPPF, *City and District Council of St Albans v Hunston Properties Ltd.* [2013] EWCA Civ 1610, Sir David Keene had expressed the view (in paragraph 4 of his judgment, with which Maurice Kay and Ryder L.JJ. agreed), that "[unhappily] … the process of simplification has in certain instances led to a diminution in clarity".

9. The Government's commitment to a "plan led" planning system is apparent throughout the NPPF. Paragraph 2 in the "Introduction" acknowledges the statutory presumption in favour of the development plan in section 38(6) of the Planning and Compulsory Purchase Act 2004, and the status of the NPPF as another material consideration:

> "Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The [NPPF] must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions. …".

There are several other references to the "plan-led" system: for example, in paragraph 17, which sets out 12 "core land-use planning principles" that "should underpin both plan-making and decision-taking". The first of these "core" principles is that planning should be "… genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area". It adds that "[plans] should be kept up-to-date …" and "should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency".

10. After the "Introduction" the NPPF is divided into three main parts: "Achieving sustainable development" (paragraphs 6 to 149), "Plan-making" (paragraphs 150 to 185) and "Decision-taking" (paragraphs 186 to 207). There are three annexes: "Annex 1: Implementation", "Annex 2: Glossary" and "Annex 3: Documents replaced by this Framework".

11. Introducing the part of the NPPF devoted to the Government's aim of "Achieving sustainable development", paragraph 6 says that the policies in paragraphs 18 to 219, "taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system". Paragraph 7 identifies "three dimensions to sustainable development: economic, social and environmental". The "social role" is "supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations …". Paragraph 8 says that these three roles are "mutually dependent".

12. Under the heading "The presumption in favour of sustainable development", paragraph 12 acknowledges that the NPPF "does not change the statutory status of the development plan as the starting point for decision making". It says that "[proposed] development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise". It adds that "[it] is highly desirable that local planning authorities should have an up-to-date plan in place". Paragraph 13 confirms that the NPPF "constitutes guidance for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications". Paragraph 14 explains how the "presumption in favour of sustainable development" is to be applied:

> "At the heart of [the NPPF] 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 [the NPPF] taken as a whole; or
  - specific policies in [the NPPF] indicate development should be restricted. [Here there is a footnote, footnote 9, which states: "For example, those policies relating to sites protected under the Birds and Habitats Directives … and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion."]

For decision-taking this means [Here there is a footnote, footnote 10, which says: "Unless material considerations indicate otherwise"]:

- 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 [the NPPF] taken as a whole; or
  - specific policies in [the NPPF] indicate development should be restricted. [Here footnote 9 is repeated.]"

13. We have already mentioned the first "core" principle in paragraph 17, relating to the "plan-led" system (see paragraph 9 above). The third "core" principle in that paragraph is that planning should "proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs". It goes on to say that "[every] effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth".

14. This part of the NPPF contains paragraphs 18 to 149, in 13 sections under the general heading "Delivering sustainable development".

15. Section 6, which contains paragraphs 47 to 55, is entitled "Delivering a wide choice of high quality homes". Paragraph 47 states:

"To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in

> [the NPPF], including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
> - identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% … to ensure choice and competition in the market for land. … ;
> - identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;
> - for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and
> - set out their own approach to housing density to reflect local circumstances."

There are two footnotes to that paragraph. Footnote 11, which explains the concept of "deliverable sites" in the second bullet point, says that "[to] be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. …". Footnote 12, which explains the concept of "developable sites" in the third bullet point, says that "[to] be considered developable, sites should be in a suitable location for housing development and there should be a reasonable prospect that the site is available and could be viably developed at the point envisaged". Paragraphs 48 and 50 to 55 are all concerned with various aspects of authorities' planning for the development of new housing and affordable housing in their areas. Paragraph 49 states:

> "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."

16. Further sections in this part of the NPPF include section 9 – "Protecting Green Belt land" (paragraphs 79 to 92), section 10 – "Meeting the challenge of climate change, flooding and coastal change" (paragraphs 93 to 108), and section 12 – "Conserving and enhancing the historic environment" (paragraphs 126 to 141).

17. In the part of the NPPF dealing with "Plan-making", paragraph 157 enjoins local planning authorities to do several things, including to "plan positively" for the development required in their areas, to "allocate sites to promote development and flexible use of land, bringing forward new land where necessary", and to "identify land where development would be inappropriate, for instance because of its environmental or historic significance". Paragraph 159 says local planning authorities "should have a clear understanding of housing needs in their area", and requires them to prepare a "Strategic Housing Market Assessment to assess their full housing needs …" and a "Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and likely

economic viability of land to meet the identified need for housing over the plan period".

18. In the part entitled "Decision-taking" paragraph 197 says that "[in] assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development".

19. Annex 1 – "Implementation" explains the arrangements for the transition to the new policies in the NPPF. Paragraph 214 says that for 12 months from the day of the NPPF's 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". Paragraph 215 states:

> "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 NPPF], the greater the weight that may be given)."

What does the policy in paragraph 49 of the NPPF mean?

20. As we have said, the meaning of the policy in paragraph 49 of the NPPF has already been considered several times at first instance, with various results. We have had our attention drawn, in particular, to the decisions of Lang J. in *William Davis Ltd. v Secretary of State for Communities and Local Government* [2013] EWHC 3058 (Admin), Lewis J. in *Cotswold District Council v Secretary of State for Communities and Local Government and others* [2013] EWHC 3719 (Admin), Lewis J. in *South Northamptonshire Council v Secretary of State for Communities and Local Government and Robert Plummer* [2013] EWHC 4377 (Admin), Ouseley J. in *South Northamptonshire Council v Secretary of State for Communities and Local Government and Barwood Land* [2014] EWHC 573 (Admin), Lindblom J. in *Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin), Lindblom J. in *Phides Estates (Overseas) Ltd. v Secretary of State for Communities and Local Government* [2015] EWHC 827 (Admin), and Lang J. in *Wenman v Secretary of State for Communities and Local Government* [2015] EWHC 925 (Admin).

21. Each of the advocates appearing in these appeals has drawn from the first instance case law either two or three distinctly different possible interpretations of the policy, which have been referred to in argument as the "narrow", the "wider" or "comprehensive", and the "intermediate" or "compromise". In the "narrow" interpretation, the meaning given to the expression "[relevant] policies for the supply of housing" is limited to policies dealing only with the numbers and distribution of new housing, and excludes any other policies of the development plan dealing generally with the disposition or restriction of new development in the authority's area. The "wider" or "comprehensive" interpretation includes both policies providing positively for the supply of new housing and other policies, to which Ouseley J. referred in *Barwood Land* (in paragraph 47 of his judgment) as "counterpart" policies whose effect is to restrain the supply by restricting housing development in certain parts of the authority's area. In the so-called

"intermediate" or "compromise" interpretation, some restrictive policies will qualify as "[relevant] policies for the supply of housing" but others will not. The latter category is said to comprise, as Ouseley J. described them in *Barwood Land*, "policies designed to protect specific areas or features, such as gaps between settlements, the particular character of villages or a specific landscape designation, all of which could sensibly exist regardless of the distribution and location of housing or other development" (paragraph 47).

22. Mr Jonathan Clay, who appeared for the district council in the Hopkins Homes case, and Mr Anthony Crean Q.C., who appeared for the borough council in Richborough Estates' appeal, both contended for the "narrow" – or, as Mr Crean described it in his oral submissions, "purist" – interpretation. Mr Christopher Lockhart-Mummery Q.C. on behalf of Hopkins Homes, Mr Christopher Young for Richborough Estates, and Mr Hereward Phillpot Q.C., who appeared for the Secretary of State in both appeals, all contended for the "wider" construction.

23. It is not our task to reconcile – if we could – the several judgments at first instance in which the meaning of this policy has been considered. Nor is it our task to select one of the interpretations given to the policy in those cases, in preference to the others. What we must do is interpret the policy correctly – regardless of whether the interpretation we find to be right has already emerged in one or more of the cases to which we have referred.

24. The approach the court will take when interpreting planning policy is well settled. As Lord Reed said in *Tesco v Dundee City Council* [2012] UKSC 13 (in paragraph 17 of his judgment, with which the other members of the Supreme Court agreed), a planning authority determining an application for planning permission "must proceed upon a proper understanding of the development plan", and "cannot have regard to the provisions of the plan if it fails to understand them". Lord Reed went on to say (in paragraph 18) that "in principle, in this area of public administration as in others … policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context". He emphasized, however (in paragraph 19), that statements of policy "should not be construed as if they were statutory or contractual provisions". He also said (in the same paragraph) that "many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment", and that "[such] matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse …" (see also the judgment of Lord Hope, at paragraph 35). It has been accepted in this court, and is not in dispute in these appeals, that the same principles apply also to the interpretation of national policy and guidance, including policies in the NPPF (see, for example, the judgment of Richards L.J. in *R. (on the application of Timmins) v Gedling Borough Council* [2015] EWCA Civ 10, at paragraph 24; and the judgment of Sir David Keene in *Hunston*, at paragraph 4).

25. Our interpretation of the policy in paragraph 49 of the NPPF must therefore be faithful to the words of the policy, read in their full context and not in isolation from it.

26. The broad context is provided by the policies of the NPPF read as a whole (see paragraph 30 of Sir David Keene's judgment in *Hunston*). The Government's aim of providing "the supply of housing to meet the needs of present and future generations" in paragraph 7 of the NPPF is reflected generally in the policies for sustainable development, in the policies for plan-making, and in the policies for decision-taking. It is part of the "social role" of the planning system in achieving sustainable development referred to in paragraph 7 of the NPPF. And it sits in the part of the NPPF where the Government has gathered its policies for delivering "sustainable development" (see paragraphs 14 to 16 above).

27. The more specific context is set by the policies for housing development in the paragraphs immediately preceding and following paragraph 49, in the section devoted to the Government's objective of "[delivering] a wide choice of high quality homes" (see paragraph 15 above). These policies are partly directed to plan-making and partly to decision-taking. Underlying them all is the basic imperative of delivery. Where they concern plan-making, their aim, very clearly stated at the beginning of paragraph 47, is to "boost significantly the supply of housing". The first requirement in that paragraph – that an authority must "ensure" that its local plan meets the "full, objectively assessed needs" for housing, "as far as is consistent with the policies set out in [the NPPF]" – involves the making of an objective assessment of need before considering the impact of other policies in the NPPF (see paragraph 25 of Sir David Keene's judgment in *Hunston*). The second requirement is for local planning authorities to "identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements …".

28. As Mr Lockhart-Mummery reminded us, for many years successive governments have relied on the planning system to increase the supply of housing land. At least since the 1970's national planning policy has contained either an objective or a requirement for local planning authorities to identify and maintain a five-year supply of housing land. Between 1988 and 1992 there was a policy presumption in favour of planning permission being granted for housing where no five-year supply existed in the authority's area. The relevant statement of national policy current when the NPPF was published, and then superseded by it, was Planning Policy Statement 3: "Housing" (issued in June 2011), which said, in paragraph 71, that where authorities were unable to demonstrate "an up-to-date five year supply of deliverable sites" they "should consider favourably planning applications for housing …". The advent of the NPPF marked a significant policy shift. In *Solihull Metropolitan Borough Council v Gallagher* [2014] EWCA Civ 1610, Laws L.J. accepted (in paragraph 16 of his judgment) that the new policy for the assessment and meeting of housing need had "indeed effected a radical change". He agreed with the judge in the court below that the larger the need for housing, "the more pressure will or might be applied to [impinge] on other inconsistent policies".

29. The policy in paragraph 49 is not a policy for plan-making; it is a policy directed to the consideration of "[housing] applications". But it is linked to the policy for plan-making in paragraph 47 in a very obvious way, because it is predicated on the requirement for the local planning authority to "demonstrate a five-year supply of deliverable housing sites".

30. Paragraph 49 is also connected to the policy for the application of the "presumption in favour of sustainable development" in paragraph 14 (see paragraph 12 above). The connection lies in the concept of relevant policies of a development plan – "[relevant] policies for the supply of housing" – not being "considered up-to-date" (the expression used in paragraph 49) – or being "out-of-date" (the expression used in paragraph 14). The adjectives "up-to-date" and "out-of-date" do not always have an exactly opposite meaning in ordinary English usage. But in the way they are used in the NPPF we think they do. The concept of relevant policies that are "out-of-date" in paragraph 14 is not limited to policies in a statutory development plan whose period has expired, though it may include such policies. It embraces the concept of "[relevant] policies for the supply of housing" that are not to be considered "up-to-date" under paragraph 49, and it extends to policies in a plan whose period is still running.

31. We turn then to the words of the policy themselves, viewed in the context we have described.

32. The contentious words are "[relevant] policies for the supply of housing". In our view the meaning of those words, construed objectively in their proper context, is "relevant policies affecting the supply of housing". This corresponds to the "wider" interpretation, which was advocated on behalf of the Secretary of State in these appeals. Not only is this a literal interpretation of the policy in paragraph 49; it is, we believe, the only interpretation consistent with the obvious purpose of the policy when read in its context. A "relevant" policy here is simply a policy relevant to the application for planning permission before the decision-maker – relevant either because it is a policy relating specifically to the provision of new housing in the local planning authority's area or because it bears upon the principle of the site in question being developed for housing. The meaning of the phrase "for the supply" is also, we think, quite clear. The word "for" is one of the more versatile prepositions in the English language. It has a large number of common meanings. These include, according to the Oxford Dictionary of English, 2nd edition (revised), "affecting, with regard to, or in respect of". A "supply" is simply a "stock or amount of something supplied or available for use" – again, the relevant definition in the Oxford Dictionary of English. The "supply" with which the policy is concerned, as the policy in paragraph 49 says, is a demonstrable "five-year supply of deliverable housing sites". Interpreting the policy in this way does not strain the natural and ordinary meaning of the words its draftsman has used. It does no violence at all to the language. On the contrary, it is to construe the policy exactly as it is written.

33. Our interpretation of the policy does not confine the concept of "policies for the supply of housing" merely to policies in the development plan that provide positively for the delivery of new housing in terms of numbers and distribution or the allocation of sites. It recognizes that the concept extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed – including, for example, policies for the Green Belt, policies for the general protection of the countryside, policies for conserving the landscape of Areas of Outstanding Natural Beauty and National Parks, policies for the conservation of wildlife or cultural heritage, and various policies whose purpose is to protect the local environment in one way or another

by preventing or limiting development. It reflects the reality that policies may serve to form the supply of housing land either by creating it or by constraining it – that policies of both kinds make the supply what it is.

34. The "narrow" interpretation of the policy, in which the words "[relevant] policies for the supply of housing" are construed as meaning "[relevant] policies providing for the amount and distribution of new housing development and the allocation of sites for such development", or something like that, is in our view plainly wrong. It is both unrealistic and inconsistent with the context in which the policy takes its place. It ignores the fact that in every development plan there will be policies that complement or support each other. Some will promote development of one type or another in a particular location, or by allocating sites for particular land uses, including the development of housing. Others will reinforce the policies of promotion or the site allocations by restricting development in parts of the plan area, either in a general way – for example, by preventing development in the countryside or outside defined settlement boundaries – or with a more specific planning purpose – such as protecting the character of the landscape or maintaining the separation between settlements.

35. Restrictive policies, whether broadly framed or designed for some more specific purpose, may – we stress "may" – have the effect of constraining the supply of housing land. If they do have that effect, they may – again, we emphasize "may" – act against the Government's policy of boosting significantly the supply of housing land. If a local planning authority is unable to demonstrate the requisite five-year supply of housing land, both the policies of its local plan that identify sites for housing development and policies restrictive of such development are liable to be regarded as not "up-to-date" under paragraph 49 of the NPPF – and "out-of-date" under paragraph 14. Otherwise, government policy for the delivery of housing might be undermined by decisions in which development plan policies that impede a five-year supply of housing land are treated as "up-to-date".

36. We cannot see any logical basis for distinguishing here between restrictive policies of a general nature and those with a more specific purpose. It was this suggested distinction between restrictive policies of one sort and restrictive policies of another that generated the "intermediate" or "compromise" construction of the policy in paragraph 49. Mr Clay and Mr Crean submitted that this construction of the policy finds support in paragraph 47 of Ouseley J.'s judgment in *Barwood Land*. In that paragraph of his judgment Ouseley J. contrasted two kinds of development plan policy: first, "policies for the provision of housing" and "counterpart" restrictive policies that "may be generally applicable to all or most forms of development", and secondly, "policies designed to protect specific areas or features, such as gaps between settlements, the particular character of villages or a specific landscape designation", which "could sensibly exist regardless of the distribution and location of housing development". He considered policy EV2 of the South Northamptonshire Local Plan, which says "planning permission will not be granted for development in the open countryside", as a policy of the first kind. He did not, however, refer to the distinction between these two kinds of policy as if it divided policies that truly are "for the supply of housing" from policies that are not.

37. To infer that from what Ouseley J. actually said is, we think, to misunderstand what he meant. In our view he was simply acknowledging the distinction between restrictive policies of a general nature – such as policy EV2 – and restrictive policies whose purpose is more specific. That, of course, is a perfectly valid distinction. It may be relevant to the application of the policy in paragraph 49 of the NPPF, and the weight given to a particular policy of the development plan in the planning balance. It is not, however, a test of whether a particular policy is or is not a policy "for the supply of housing". And we do not believe that Ouseley J. was seeking to suggest that it was. As he went on to say in paragraph 48 of his judgment, "… once the Inspector has properly directed himself as to the scope of paragraph 49 [of the] NPPF … , the question of whether a particular policy falls within its scope, is very much a matter for his planning judgment". That statement is, in our view, correct – and we shall come back to it when we consider how the policy in paragraph 49 is to be applied.

38. We therefore reject the "intermediate" or "compromise" interpretation of paragraph 49. Like the "narrow" interpretation, it fails to recognize that it is the effect of certain policies – whether general or specific – in restricting housing development and preventing an authority from demonstrating a "five-year supply of deliverable housing sites" that brings them within the scope of the policy in paragraph 49.

39. Mr Clay and Mr Crean submitted that footnote 9 in paragraph 14 of the NPPF supports the "narrow" – or at least the "intermediate" or "compromise" – interpretation of paragraph 49. But we cannot see how it does. Footnote 9 explains the concept of specific policies in the NPPF indicating that development should be restricted. The NPPF policies it gives as examples relate to protected birds and habitats, Sites of Special Scientific Interest, the Green Belt, Local Green Space, Areas of Outstanding Natural Beauty, Heritage Coasts, National Parks, the Broads, heritage assets and locations at risk of flooding or coastal erosion (see paragraph 12 above). For all of these interests of acknowledged importance – some of them also subject to statutory protection – the NPPF has specific policies. The purpose of the footnote, we believe, is to underscore the continuing relevance and importance of these NPPF policies where they apply. In the context of decision-taking, such policies will continue to be relevant even "where the development plan is absent, silent or relevant policies are out-of-date". This does not mean that development plan policies that are out-of-date are rendered up-to-date by the continuing relevance of the restrictive policies to which the footnote refers. Both the restrictive policies of the NPPF, where they are relevant to a development control decision, and out-of-date policies in the development plan will continue to command such weight as the decision-maker reasonably finds they should have in the making of the decision. There is nothing illogical or difficult about this, as a matter of principle.

40. Mr Clay also submitted that the "narrow" or at least the "intermediate" construction of paragraph 49 is supported by the policy in paragraph 215 of the NPPF (see paragraph 19 above). Again, we cannot see how that can be so. Paragraph 215 is one of a series of paragraphs in Annex 1 to the NPPF dealing with the implementation of the policies it contains. These are, essentially, transitional provisions. They do not affect the substance of the policies

themselves. Under paragraph 214 there was a period of 12 months from the publication of the NPPF – until 27 March 2013 – within which decision-takers "may" continue to give full weight to policies adopted since 2004 even if they conflicted with the policies in the NPPF. After that, under paragraph 215, "due weight" was to be given to relevant plan policies, "according to their degree of consistency" with the policies in the NPPF. These provisions for the implementation of NPPF policy do not touch the interpretation of such policy, including the policies for the delivery of housing in paragraphs 47 to 55 and the policy explaining the "presumption in favour of sustainable development" in paragraph 14. The suggestion that they do is mistaken.

41. As we have said (in paragraph 23 above), we have not set out to reconcile the several first instance judgments in which the meaning of the policy in paragraph 49 has been considered before. In fact, that would not be possible. We ought to say, however, that those cases in which the court has rejected the "wider" interpretation of the policy have not in our view been correctly decided on that particular point. Of the cases cited to us (see paragraph 20), this may be said of the decision in *William Davis*, where the judge concluded that a policy restricting development in a "Green Wedge" (policy E20 of the North-West Leicestershire Local Plan, adopted in 2002) was not a relevant policy for the supply of housing within paragraph 49, despite the fact that it prevented housing development on the appeal site (see paragraph 47 of the judgment). We should add, however, that the judge did not have the benefit of all the submissions we have heard on this point, or of the later decisions in which it has been considered. In *Wenman* the judge appears to have accepted that two policies of a local plan dealing respectively with the "Environmental Implications of Development" and "Design and Layout" (policies D1 and D4 of the Waverley Borough Local Plan 2002) were not policies for the supply of housing, because they were not "general" restrictions on development and fell within the second kind of restrictive policy referred to by Ouseley J. in paragraph 48 of his judgment in *Barwood Land* (see paragraphs 57 to 59 of the judgment). But that distinction between two kinds of policy restrictive of housing development is not a dividing line between policies that are "for the supply of housing" and those that are not (see paragraphs 36 to 38 above). Again, however, we would add that the judge did not have the advantage of the argument we have heard. It also seems to us that the erroneous interpretation of the policy in paragraph 49 of the NPPF made no difference to the outcome of the proceedings because the two local plan policies in question were not, in fact, restrictive of housing development in either of the two respects identified by Ouseley J. in *Barwood Land*.

How is the policy in paragraph 49 of the NPPF to be applied?

42. The NPPF is a policy document. It ought not to be treated as if it had the force of statute. It does not, and could not, displace the statutory "presumption in favour of the development plan", as Lord Hope described it in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447 at 1450B-G). Under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act, government policy in the NPPF is a material consideration external to the development plan. Policies in the NPPF, including those relating to the "presumption in favour of sustainable

development", do not modify the statutory framework for the making of decisions on applications for planning permission. They operate within that framework – as the NPPF itself acknowledges, for example, in paragraph 12 (see paragraph 12 above). It is for the decision-maker to decide what weight should be given to NPPF policies in so far as they are relevant to the proposal. Because this is government policy, it is likely always to merit significant weight. But the court will not intervene unless the weight given to it by the decision-maker can be said to be unreasonable in the *Wednesbury* sense.

43. When determining an application for planning permission for housing development the decision-maker will have to consider, in the usual way, whether or not the proposal accords with the relevant provisions of the development plan. If it does, the question will be whether other material considerations, including relevant policies in the NPPF, indicate that planning permission should not be granted. If the proposal does not accord with the relevant provisions of the plan, it will be necessary to consider whether other material considerations, including relevant policies in the NPPF, nevertheless indicate that planning permission should be granted.

44. The NPPF presents the decision-maker with a simple sequence of steps when dealing with a proposal for housing development. The first step, under the policy in paragraph 49, is to consider whether relevant "policies for the supply of housing" in the development plan are "out-of-date" because "the local planning authority cannot demonstrate a five-year supply of deliverable housing sites". Gauging the housing land supply will entail the use of the appropriate method of assessment, whatever that may be (see, for example, the judgment of Lindblom J. in *Bloor Homes East Midlands Ltd. v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin), at paragraphs 101 to 135).

45. Whether a particular policy of the plan, properly understood, is a relevant policy "for the supply of housing" in the sense we have described is not a question for the court. It is, as Ouseley J. said in paragraph 48 of his judgment in *Barwood Land*, a question for the decision-maker. Provided the decision-maker acts on the correct understanding of the policy in paragraph 49 of the NPPF, and also on the correct understanding of the development plan policy in question, these being matters for the court, it is for him to judge whether the plan policy is or is not a relevant policy for the supply of housing. That is a matter for his planning judgment, and the court will only intervene on public law grounds. If the decision-maker finds that relevant policies of the plan are "out-of-date", he applies the "presumption in favour of sustainable development" in the way that paragraph 14 of the NPPF requires. Again, he will be exercising his planning judgment, and again, therefore, the court will only review that exercise of judgment on public law grounds.

46. We must emphasize here that the policies in paragraphs 14 and 49 of the NPPF do not make "out-of-date" policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker (see the speech of Lord Hoffmann in *Tesco Stores Ltd. v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H).

Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is "out-of-date" should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied. That idea appears to have found favour in some of the first instance judgments where this question has arisen. It is incorrect.

47. One may, of course, infer from paragraph 49 of the NPPF that in the Government's view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy – such as the protection of a "green wedge" or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment (see paragraphs 70 to 75 of Lindblom J.'s judgment in *Crane*, paragraphs 71 and 74 of Lindblom J.'s judgment in *Phides*, and paragraphs 87, 105, 108 and 115 of Holgate J.'s judgment in *Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government and Mid-Sussex District Council* [2015] EWHC 1173 (Admin)).

48. The policies in paragraphs 14, 47 and 49 of the NPPF are not, as we understand them, intended to punish a local planning authority when it fails to demonstrate the requisite five-year supply of housing land. They are, however, clearly meant to be an incentive. As Sir David Keene said in paragraph 31 of his judgment in *Hunston*:

> "… Planning decisions are ones to be arrived at in the public interest, balancing all the relevant factors and are not to be used as some form of sanction on local councils. It is the community which may suffer from a bad decision, not just the local council or its officers."

Was the policy in paragraph 49 interpreted correctly and applied lawfully in the Hopkins Homes case?

49. The development plan in the Hopkins Homes case comprised the Suffolk Coastal District Local Plan, adopted by the district council in July 2013, and certain "saved" policies of the Suffolk Coastal Local Plan, which was adopted in December 1994. Policy SP19 of the 2013 local plan, the "Settlement Policy", not

only sets the settlement hierarchy but the distribution of housing growth between the different types of centre within the hierarchy and provides for the scale of development appropriate to settlements in each tier of it. In "Key Service Centres", of which Yoxford is one, it indicates that "[modest] estate-scale [housing] development" is appropriate "[within] the defined physical limits" of the settlement. The site on which Hopkins Homes' development was proposed lies outside the defined physical limits boundary of Yoxford as a Key Service Centre. It is within the "Countryside", where the policy says there is to be "[no] development other than in special circumstances". Policy SP27, which relates to "Key Service Centres" and "Local Service Centres", says that housing development will be permitted "within defined physical limits …". Policy SP29 relates to the "Countryside". So far as is relevant here, it states that the council's strategy for new development "outside the physical limits" of settlements including Key Service Centres is that "it will be limited to that which of necessity requires to be located there and accords with other relevant policies within the Core Strategy …".

50. The inspector concluded that "it seems very unlikely that a 5 years supply of housing land can now be demonstrated", noting that, in its closing submissions at the inquiry, the district council had not sought to persuade him that it could be (paragraph 5 of the decision letter). Having referred to the policies in paragraphs 14 and 49 of the NPPF and Lang J.'s decision in *William Davis* (in paragraph 6), he went on to consider which were "relevant policies for the supply of housing". He acknowledged the conclusions of the inspector who had conducted the examination of the local plan (in paragraph 50 of his report) "as identifying that there would be advantages of considering development in the light of other [up-to-date] policies whilst accepting that, until a review was undertaken, relevant policies for the supply of housing may be considered not to be up-to-date" (paragraph 7). In paragraphs 8 and 9 of his decision letter he said:

> "8. … Policy SP19 sets the settlement hierarchy and shows a percentage of the total proposed housing growth which should go to the broad categories of settlements. This policy has a broad scope and does not suggest figures or percentages for individual settlements. In this context, I do not see this policy as not up-to-date.
>
> 9. Policy SP27 of the LP relates specifically to Key and Local Service Centres and seeks to, among other things: reinforce their individual character; permit housing within defined physical limits unless there is a proven local support for development appropriate to the particular community. I do not consider this policy to be a relevant policy for the supply of housing and I consider it to be up-to-date."

And in paragraph 14 he concluded that the proposed development "would be unacceptable in principle, contrary to the provisions of Policies SP27 and SP29 and contrary to one of the core principles of [the NPPF]".

51. Before Supperstone J., as before us, it was submitted for the district council that the inspector properly understood the policy in paragraph 49 of the NPPF, and applied it lawfully. We disagree. The judge was, in our view, right to accept the

submissions of Mr Lockhart-Mummery that the inspector misconstrued the policy in paragraph 49, and that this amounted to a "fundamental misdirection as to [the NPPF]" (paragraphs 33, 38 and 39 of the judgment). In our view it is quite clear on a fair reading of the passages of the decision letter to which we have referred that the inspector adopted the "narrow" interpretation of paragraph 49, and thus also misdirected himself in the application of the policy. As the judge held, these were errors of law fatal to the inspector's decision.

52. Having wrongly construed the policy in paragraph 49, the inspector regarded policies SP19, SP27 and SP29 of the local plan as being "up-to-date", and thus capable of carrying full weight in his decision. As Mr Lockhart-Mummery submitted, and Mr Phillpot on behalf of the Secretary of State accepted, all three of these policies of the local plan are, on a true understanding of the policy in paragraph 49 of the NPPF, "[relevant] policies for the supply of housing". They all affect the supply of housing land in a real way by restraining it. Mr Clay submitted that policy SP27 is not restrictive of development, but "entirely permissive or positive in its effect" (paragraph 68 of his skeleton argument). But that is not so. Read together with policies SP19 and SP29, policy SP27 is, and is clearly intended to be, restrictive of new housing development outside the defined boundaries of Key Service Centres. It is permissive only of housing development within the defined physical limits of the settlements to which it relates. And policy SP29 is generally prohibitive in its effect on development proposed in the "Countryside".

53. We therefore reject Mr Clay's submission that Supperstone J. misdirected himself as to the interpretation of these three policies of the local plan, and, in particular, in accepting that the inspector had erred in failing to treat policy SP29 as a policy "for the supply of housing". All three of these policies, properly construed, are policies by which a material degree of restraint was imposed on both the location and amount of new housing development. All three were obviously relevant to Hopkins Homes' site and proposal. If the inspector had adopted the correct interpretation of the policy in paragraph 49 of the NPPF – which he plainly did not – he could not reasonably have done other than conclude that these policies of the local plan were all "[relevant] policies for the supply of housing", and that, given his conclusion on the absence of a five-year supply of housing land, they were, each of them, "out-of-date". He would then have had to apply the "presumption in favour of the development plan" in accordance with the policy in paragraph 14 of the NPPF, giving these "out-of-date" policies of the plan such weight as he thought they should have in the particular circumstances of this case. That, however, is not what he did.

54. We should add that in our view Mr Clay's argument gains nothing from his reliance on passages in the local plan inspector's report – which is dated 6 June 2013. The local plan inspector concluded, in paragraph 51 of his report, that "[if] the proposal for a review were to be accepted, planning applications for housing would be considered in the context of an up to date suite of local development management policies that are consistent with the Framework, the CS settlement hierarchy and the locational guidance in the strategic policies", and that "[overall], the housing land supply would be improved while still ensuring sustainable outcomes". Those observations, based on the evidence before the local plan

inspector at the examination hearings held in October and November 2012, do not negate the conclusion of the inspector who heard Hopkins Homes' appeal at his inquiry in 2014 that it was very unlikely that the requisite five-year supply of housing land could now be demonstrated. It was in the light of that conclusion, which is not challenged in these proceedings, that the appeal inspector went on to consider whether policies SP19, SP27 and SP29 were up-to-date.

55. We conclude, therefore, that the policy in paragraph 49 of the NPPF was neither interpreted correctly nor applied lawfully by the inspector in the Hopkins Homes case. These errors of law vitiate his decision. And in our view the court could not properly exercise its discretion to withhold a quashing order.

Were there further errors of law in the inspector's decision in the Hopkins Homes case?

56. In view of our conclusion that government policy for housing development was both misinterpreted and misapplied in the decision on Hopkins Homes' appeal, and that the decision must therefore be quashed, we can take the remaining allegations of unlawfulness in this case quite shortly.

57. The second ground in Hopkins Homes' application to the court asserts that the inspector erred in finding, in paragraph 13 of his decision letter, that the appeal site was "outside the physical limits boundary [of Yoxford] as defined in the very recently adopted Local Plan". The contention here was that the boundary had merely been carried over, without review, from the proposals map of the Suffolk Coastal Local Plan First Alteration, adopted by the district council in February 2001. In Appendix D to the 2013 local plan it is stated that the proposals maps will be "superseded by the adoption of subsequent Development Plan Documents". The contrary argument, put forward by Mr Clay, was that the local plan makes clear, in particular through policy SP19, that as a result of the adoption of the district council's core strategy, a number of settlements within the district had had their physical limits boundaries removed. It followed that the inspector was right as a matter of fact when he said that the physical limits boundary of the settlement was "defined" in the recently adopted local plan.

58. The judge's conclusion on this ground, in paragraph 46 of his judgment, was that the inspector had been mistaken in assuming, as he seems to have done, that the physical limits boundary of Yoxford had been established in the 2013 local plan, which it had not. The position as a matter of fact is that the physical limits boundary of Yoxford was defined on the proposals map of the old local plan, and had remained unchanged in the 2013 local plan. This was obviously germane to the status of the relevant plan "policies for the supply of housing". It does not mean, as Mr Clay submitted, that the settlement boundaries in the local plan are now generally to be "disregarded".

59. We accept that this ground merges with that relating to the inspector's interpretation and application of the policy in paragraph 49 of the NPPF. But nevertheless we think Mr Lockhart-Mummery's submissions to the judge, repeated in this court, are correct. The judge was right, in our view, to find that in

this particular respect, as well as more generally in his construction and application of the policy in paragraph 49 of the NPPF, the inspector fell into error.

60. The other additional ground is that the inspector misunderstood and misapplied national policy for the protection of heritage assets in paragraph 135 of the NPPF, failing to identify the "significance" of the historic parkland surrounding the late Georgian house at Grove Park as a heritage asset, and to consider the likely effect of the proposed development on that "significance".

61. Paragraph 129 of the NPPF says that local planning authorities "should identify and assess the particular significance of any heritage asset that may be affected by a proposal …", and "should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal". Paragraph 135 states:

> "The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgment will be required having regard to the scale of any harm or loss and the significance of the heritage asset."

"Significance (for heritage policy)" is defined in the "Glossary" in Annex 2 to the NPPF as meaning "[the] value of a heritage asset to this and future generations because of its heritage interest …".

62. The site of Hopkins Homes' proposed development is within an area defined by the district council as "Historic Parkland" in its "Supplementary Planning Guidance 6 – Historic Parks and Gardens" of December 1995. Saved policy AP4 of the 1994 local plan relates to "Parks and Gardens of Historic or Landscape Interest". It says that development will not be granted planning permission if it would have "a materially adverse impact" on the "character, features or immediate setting" of a historic park or garden. Saved policy AP13 relates to designated "Special Landscape Areas", which include "the Parks and Gardens of Historic or Landscape Interest". It says the council "will ensure that no development will take place which would be to the material detriment of, or materially detract from, the special landscape quality" of these areas. The appeal site is in the River Yox Valley Special Landscape Area.

63. In paragraph 10 of his decision letter the inspector found "a degree of conflict" between policy AP4 of the 1994 local plan and government policy in the NPPF "due to the absence of a balancing judgement in Policy AP4", but that the "broad aim" of this policy was consistent with aims of the NPPF and the Planning Practice Guidance, so the weight it should be given was reduced but it was still due "some weight". He took a similar view of policy AP13, noting that the NPPF and the Planning Practice Guidance "recognise the intrinsic quality of the countryside and promote policies for the conservation and enhancement of the natural environment and to this extent, policy AP13 is consistent with those aims". In paragraphs 15 to 21 of his letter he considered "[the] effects of the proposal on the local historic parkland and landscape". He noted that the supplementary

planning guidance says "the essential qualities of the Park remain" (paragraph 15). He observed that "one of the key underlying qualities of parkland, that is openness and freedom from built development remains", and that "… the existence of the trees, the historic association with the house and the entrance at the south east, which has a perimeter wall of very similar design to the north east entrance are matters which qualify as "remnants of that former park"" (paragraph 16). He said the settlement of Yoxford "sits in a position virtually surrounded" by three historic parklands, which provide "a very attractive setting for the village" (paragraph 17). He concluded that in several respects the development would have a "negative" visual impact (paragraph 18), that the negative "landscape effects" would not be compensated for by the proposed new planting (paragraph 19), and that, because it would lie beyond the "strong and definite boundary to the built development of the village" formed by Old High Road, it "would be seen as an ad-hoc expansion across what would otherwise be seen as the village/countryside boundary …" (paragraph 20). In paragraph 21 he said:

> "In respect of these matters, the historic parkland forms a non-designated heritage asset, as defined in [the NPPF] and I conclude that the proposal would have an unacceptable effect on the significance of this asset. In relation to local policies, I find that the proposal would be in conflict with the aims of Policies AP4 and AP13 of the old Local Plan and Policies SP1, SP1A and SP15 of the LP."

64. Before the judge, and again before us, Mr Lockhart-Mummery submitted that the inspector was wrong to conclude that the "broad aim" of policy AP4 was consistent with government policy in paragraph 135 of the NPPF, but that, in any event, the inspector failed to grapple with the question of whether the development really would harm the significance of the historic parkland as a heritage asset, and, if so, how. Those submissions were countered by Mr Clay, who argued that, on a fair reading of the relevant parts of the decision letter, the inspector reduced the weight he gave to policy AP4 in the light of NPPF policy, and reached a clear conclusion on the harm the development would cause not merely to the local landscape but also to the significance of the heritage asset.

65. In paragraph 53 of his judgment, Supperstone J. accepted Mr Lockhart-Mummery's submission that the inspector had failed to undertake the assessment required by paragraph 135 of the NPPF. Again we think he was right. The inspector's error here, as Mr Lockhart-Mummery submitted, was that he failed to identify distinctly what the significance of the historic parkland was as an undesignated "heritage asset", having regard to the definition of "significance" in the NPPF; did not, therefore, equip himself to make the judgment required of him by paragraph 135 of the NPPF; and did not form that judgment. There can be no criticism of his treatment of the impact of the development on the local landscape, of which the historic parkland forms part. What is lacking, however, is a distinct and clearly reasoned assessment of the effect the development would have upon the significance of the parkland as a "heritage asset", and, crucially, the "balanced judgment" called for by paragraph 135, "having regard to the scale of any harm or loss and the significance of the heritage asset". It may well be, we accept, that if the inspector had undertaken the necessary assessment and formed that "balanced judgment", his conclusion in paragraph 21 would have been no different. But we

do not think one can be sure of that. On this ground too, therefore, we uphold the judge's decision.

Was the policy in paragraph 49 interpreted correctly and applied lawfully in the Richborough Estates case?

66. The development plan in the Richborough Estates case comprised the saved policies of the Crewe and Nantwich replacement local plan 2011, adopted in February 2005, with an end date of 2011. The relevant, or potentially relevant, policies of this local plan were policy NE2 – "Open Countryside", policy NE4 – "Green Gaps", and policy RES5 – "Housing in the Open Countryside", all of which restrict the development of new housing in the areas to which they relate.

67. The inspector found that there was not a demonstrable five-year supply of deliverable housing sites (paragraph 24 of his decision letter). He concluded, in the light of that finding, that the weight to be given to development plan policies relevant to the supply of housing was reduced, and that this conclusion applied to policies NE2, NE4 and RES5 in so far as the settlement boundaries referred to or assumed in those three policies reflected out-of-date housing requirements, though he recognized that policy NE4 had a wider purpose in maintaining gaps between settlements, including the gap between Willaston and Rope (paragraph 94).

68. Before Lang J. it was not in dispute that the inspector was entitled to conclude that policies NE2 and RES5 were relevant policies for the supply of housing for the purposes of paragraph 49 of the NPPF, and were properly treated by the inspector as "out-of-date" (paragraphs 35 and 37 of the judgment). The contentious policy was policy NE4, about which the inspector had said, in paragraphs 34 and 35 of his decision letter:

> "34. RLP policy NE.4 (*Green Gaps*) and the proposals map designate a number of areas as green gaps. The policy states that in those gaps, in addition to the provisions of policy NE.2, approval will not be given for new buildings or the change of use of existing buildings or land which would result in erosion of the physical gaps between built-up areas or adversely affect the visual character of the landscape (except where no alternative location is available). I recognise that the policy thus performs 'strategic' functions in maintaining the separation and definition of settlements and in landscape protection, and this remains pertinent.
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> 35. However, since the inner boundaries of the Green Gaps are also formed by the settlement boundaries, the considerations that apply to policy NE.2 also pertain to this policy in this respect. Significantly, two of the housing sites identified in the emerging [Chester East Local Plan] are in existing designated green gaps around Crewe. Although they are not in this vicinity and different considerations might apply, at this stage it cannot be assumed that the appeal site will remain outside the defined settlement boundary in the Plan when finally adopted. In this respect I consider that policy NE.4 is also not up-to-date in the terms of the NPPF and therefore the weight I give it is reduced."

69. Lang J. accepted the argument put forward by Mr Crean that policy NE4 was a restrictive policy of the second kind identified by Ouseley J. in paragraph 48 of his judgment in *Barwood Land* and not, therefore, a policy for the supply of housing within the meaning of paragraph 49 of the NPPF. The "natural meaning" of the "policies for the supply of housing" was, she said, "policies which make provision for housing" (paragraph 51 of her judgment). She went on to say, however, that she understood and endorsed Ouseley J.'s reasons for giving paragraph 49 "a broader purposive interpretation". But in her view it was "not open to inspectors to disregard the distinction [Ouseley J.] drew between general policies to restrict development and those policies designed to protect specific areas or features, as this goes to the heart of the meaning and purpose of paragraph 49, in the context of the NPPF as a whole and within its proper statutory context" (paragraph 53). She said the effect of the policy in paragraph 49, if construed as the Secretary of State contended, would be to "dis-apply local policies even though they have been adopted by the local planning authority and remain in force …" (paragraph 56). She doubted that the Government had intended the NPPF "to be used to routinely bypass local policies protecting specific local features and landscapes, as that would undermine the statutory scheme" (paragraph 57). If a policy came within the policy in paragraph 49, it was "effectively dis-applied in its entirety" (paragraph 62). The inspector had erred in finding that policy NE4 of the local plan came within the scope of paragraph 49, and had sought "to divide the policy, so as to apply it in part only" (paragraph 63).

70. As will be clear from what we have already said about the interpretation and application of the policy in paragraph 49 of the NPPF, we respectfully disagree with Lang J.'s analysis. In the first place, her interpretation of the policy was not correct. Secondly, the "broader purposive interpretation" adopted by Ouseley J. in his judgment in *Barwood Land*, which Lang J. said she endorsed, does not, in truth, distinguish between one kind of restrictive policy and another. It allows an inspector to form his or her own judgment – as the inspector in this case did – on whether any policy of the development plan, properly construed, is or is not a relevant policy "for the supply of housing". Thirdly, the policy in paragraph 49 does not disapply, or "bypass", an "out-of-date" policy in a statutory development plan. The effect of a relevant policy being found to be "out-of-date" or not "up-to-date" under paragraph 49 is that the presumption in favour of sustainable development is to be applied as paragraph 14 of the NPPF provides. As we have said (in paragraph 46 above), this does not mean that the policy in question is to be disregarded. It must still be given the weight it is due in all the circumstances of the case. In this case, for example, there was nothing wrong in the inspector finding policy NE4 to be one of the relevant policies of the local plan that was "out-of-date" under the policy in paragraph 49 but nevertheless giving it appropriate weight in the planning balance in view of its particular purpose to maintain a "green gap" between Willaston and Rope.

71. The inspector proceeded on a correct understanding of the policy in paragraph 49 of the NPPF and a correct understanding of the relevant development plan policies. He exercised his own judgment – as he had to – when resolving which of those policies were within the scope of paragraph 49, and how much weight he should give them when applying the statutory presumption in favour of the

development plan in section 38(6) of the 2004 Act and the policy "presumption in favour of sustainable development" in the NPPF. He made no error of law. Both his approach and his conclusions are legally sound. His decision should not have been quashed.

Conclusion

72. For the reasons we have given, the district council's appeal in the Hopkins Homes case must be dismissed and Richborough Estates' appeal allowed.