BDW Trading Ltd v Secretary Of State for Communities and Local Government and another

[2015] EWHC 886 (Admin)

Planning Court

Hickinbottom J

01 April 2015

Hugh Richards (instructed by Gateley LLP) for the Claimant

Richard Kimblin (instructed by the Treasury Solicitor) for the First Defendant

The Second Defendant was not represented and did not appear

Hearing date: 26 March 2015

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Approved Judgment

Mr Justice Hickinbottom :

Introduction

1. This is an application under Section 288 of the Town and Country Planning Act 1990 (“the 1990 Act”), in which the Claimant seeks to quash a decision dated 24 October 2014 of an inspector appointed by the First Defendant Secretary of State, Ms Victoria Lucas-Gosnold LLB MCD MRTPI (“the Inspector”) to dismiss an appeal against the decision of the Second Defendant local planning authority (“the Council”) dated 24 March 2014 to refuse planning permission for a proposed development of 114 dwellings on 4.9 hectare site at Walton Heath, Common Lane, Stone, Staffordshire (“the Site”).

2. Before me, Hugh Richards appeared for the Claimant, and Richard Kimblin for the Secretary of State; and I thank them both at the outset for their assistance.

The Legal and Policy Background

3. In relation to planning decisions, the following propositions, relevant to this claim, are well-established and uncontroversial.

i) A planning decision-maker must take into account all material considerations (section 70 of the 1990 Act).

ii) Although what amounts to a material consideration is a matter of law, the weight to be given to material considerations is exclusively a matter of planning judgment for the decision-maker, who is entitled to give a material consideration whatever weight, if any, he considers appropriate. That discretion is subject only to (a) express statutory provision or guidance which might inform the exercise of the discretion; and (b) the decision not being irrational in the sense of Wednesbury unreasonable, i.e. a decision to which no person in the position of the decision-maker and on the evidence before him could reasonably come (Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759 at page 780F-G). Because the exercise of discretion involves a series of planning judgments, in respect of which an inspector or other planning decision-maker has particular experience and expertise, anyone who challenges a planning decision on Wednesbury grounds, faces “a particularly daunting task” (Newsmith v Secretary of State for the Environment, Transport and the Regions [2001] EWHC 75 (Admin) at [8] per Sullivan J, as he then was).

iii) Section 70(2) of the 1990 Act expressly provides that “the development plan” is a material consideration. The content of the development plan is defined in section 38 of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) to include “development plan documents” for the relevant area. However, the development plan is not simply a material consideration, because section 38(6) gives it a particular status. It provides that:

“If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

Therefore, section 38(6) raises a presumption that planning decisions will be taken in accordance with the development plan. It is enough if the proposal accords with the development plan considered as a whole: it does not have to accord with each and every policy (R (Cummins) v Secretary of State for the Environment, Transport and the Regions [2001] EWHC 1116 (Admin) at [161]-[162] per Ouseley J).

iv) The general approach required of decision-makers by section 38(6) was recently considered in R (Hampton Bishop Parish Council) v Herefordshire Council [2013] EWHC 3947 (Admin) (“Hampton Bishop”), in which Richards LJ, giving the judgment of the court, said this (at [28]):

“… It is up to the decision-maker how precisely to go about the task, but if he is to act within his powers and in particular to comply with the statutory duty to make the determination in accordance with the development plan unless material considerations indicate otherwise, he must as a general rule decide at some stage in the exercise whether the proposed development does or does not accord with the development plan.”

That was, Richards LJ said, the true gist of City of Edinburgh v Secretary of State for Scotland [1997] 1 WLR 1447, to which I was referred by Mr Kimblin. The rule Richards LJ expounded is of general application, although it may not apply where (e.g.) the development plan has been overtaken by more recent policy statements such that it is appropriate to give it no weight (Hampton Bishop at [28]) or only minimal weight (North Cote Farms Limited v Secretary of State for Communities and Local Government [2015] EWHC 292 (Admin) at [64]).

v) Whether a proposed development does or does not accord with a development plan as a whole is, of course, a matter of substance and not form. Where the relevant planning decision-maker does not expressly state that he has considered and determined that issue, on the basis of the decision looked at as a whole and in its full context, it may nevertheless be apparent that he has done so.

vi) “Material considerations” in this context also include statements of central government policy now set out in the National Planning Policy Framework (“the NPPF”). Any local guidance is also a material consideration.

vii) A decision-maker must interpret policy documents properly, the true interpretation of such policy being a matter of law for the court (Tesco Stores Ltd v Dundee City Council [2012] UKSC 13).

viii) An inspector’s decision letter cannot be subjected to the exegesis that might be appropriate for a statute or a deed: it must be read as a whole and in a practical and common sense way, without resorting to strained interpretation of the relevant policies (Seddon Properties v Secretary of State for the Environment (1981) 42 P&CR 26 at page 28 per Forbes J; and R (TW Logistics) v Tendring District Council [2013] EWCA Civ 9 at [18] per Lewison LJ).

ix) Although an application under section 288 is by way of statutory appeal, it is determined on traditional judicial review grounds.

x) Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 (SI 2010 No 2184) requires that the reasons for refusal of planning permission be set out in the decision notice in terms that are clear, precise and complete specifying all policies of the development plan that are relevant to the decision. Reasons for a decision must be sufficient to enable a party to understand how any such issue, of fact or law, has been resolved (South Bucks District Council v Porter (No 2) [2004] UKHL 33 at [36] per Lord Brown). However, (a) as Cranston J recently emphasised in Arsenal Football Club plc v Secretary of State for Communities and Local Government [2014] EWHC 2620 (Admin) at [34], an inspector is only required to deal with and give reasons in respect of the main issues in dispute before him, not every material consideration; and (b) a reasons challenge will only succeed if the aggrieved party has been substantially prejudiced by the failure to provide an adequately reasoned decision.

4. The relevant national policy is now of course found in the NPPF. Paragraphs 11-12 confirm the statutory status of the development plan. Paragraph 17 provides, as a core planning principle, that planning should “be genuinely plan-led…”; and also “seek to secure… a good standard of amenity for all existing and future occupants of land and buildings…”. Paragraph 14 states that a presumption in favour of sustainable development is at the heart of the NPPF and should be seen as “a golden thread running through both plan-making and decision-taking”. For the latter it says:

“For decision-taking this means [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 the relevant policies are out of date, granting permission unless:

- any adverse impacts of so doing would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or

- specific policies in this Framework indicate development should be restricted.”

Paragraph 49 of the NPPF provides that housing applications should be considered in the context of the general presumption in favour of sustainable development found in paragraph 14.

5. With regard to local policy, at the time the Council refused the application for planning permission in this case, the development plan included various saved policies from the Council’s 2001 Local Plan, although a new plan (The Plan for Stafford Borough (“the Stafford Plan”)) was emerging. However, by the time of the Inspector’s decision, the Council had adopted the Stafford Plan, which overtook the earlier policies. It became the main development plan document. The Inspector, having given the parties an opportunity to address the relevant policies in that plan, rightly had regard to the policy position as at the date of her determination.

6. Within the new Stafford Plan, Spatial Principle 1 (“Policy SP1”) states that:

“When considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the [NPPF].”

7. Spatial Principle SP7 (“Policy SP7”) provides:

“Settlement Boundaries will be established in accordance with the following criteria. Prior to the establishment of the actual boundaries these principles will be used to assess the acceptability of individual proposals at the Key Service Villages. Settlement boundaries will be defined to ensure that development within that boundary will, in principle, be acceptable because it:

…

(l) will not adversely affect the residential amenity of the locality.”

8. It was common ground before me that:

i) At the time of the Inspector’s decision, settlement boundaries had not been established.

ii) Although Stone is not by strict definition a “Key Service Village”, Policy SP7 applied in this case.

The Site

9. The Site comprises two fields on the south-western edge of Stone, the second largest settlement in the Council’s area. It adjoins an existing modern residential development off Common Lane, which development includes Spode Close, a short cul-de-sac, the end of which almost abuts the Site.

10. It is proposed to construct a total of 114 dwellings on the Site, of which 40% would be provided as affordable housing; and a new public open space, pedestrian corridors and other ancillary features. It is proposed that, once the development is completed, although there is another potential access point from the existing estate (via Marlborough Road), the sole vehicular access to the Site will be via Spode Close. Spode Close has access to the nearest main distributor road via roads running through the existing residential development via Crestwood Road and Common Lane, and three T-junctions.

The Application for Planning Consent

11. The Claimant made its application for planning permission on 15 November 2013, which was refused by the Council by decision notice dated 24 March 2014.

12. The decision notice gave only one reason for refusing the Claimant’s application:

“The amount of additional traffic generated by the proposed development, together with the constrained ability to disperse additional vehicles in the surrounding residential area would result in unacceptable levels of noise and disturbance that would have a significantly harmful effect on the living conditions of the neighbouring residents. This would be contrary to [various saved Policies from the 2001 Local Plan], [Policy SP7(l)] of the emerging [Stafford Plan] and paragraph 17 of the [NPPF].”

13. The Claimant appealed under section 78 of the 1990 Act, and elected to have the appeal dealt with under the hearing procedure. The Inspector was duly appointed, and held two days of hearings in addition to making a site visit.

14. She benefited from, not only the representations of the parties, but also a Statement of Common Ground that they agreed, which set out the relevant factual and policy background. In paragraph 5.2.1, it fairly paraphrased the Council’s reason for refusal, as follows:

“1. Harm by way of unacceptable levels of noise and general disturbance would arise.

2. The noise would be caused by additional traffic on the already constrained local highway network.

3. The noise would adversely affect the living conditions in dwellings neighbouring the local highway network.”

15. The Council accepted in paragraph 4.1 of its written submissions to the Inspector that it was “satisfied that the proposals broadly comply with the relevant Development Plan policies except [SP7(l)] and paragraph 17 of the NPPF”.

16. Paragraphs 5.10 and 5.11 of the Statement of Common Ground dealt with “Applying the Planning Balance”, by setting out the benefits and possible disbenefits of the proposal. The list of benefits to be weighed in the planning balance was relatively long, and included that the appeal site was in a sustainable location, and that the proposal was considered to be sustainable development and would have acceptable highway impacts. There was one possible disbenefit listed, namely:

“Any harm to the living conditions of residents living adjacent to the local highway network as a result of additional traffic.”

17. Paragraph 6.1.1 continued:

“The issues on which the parties do not agree are as follows:

· Whether the additional traffic generated by the proposed development would result in unacceptable levels of noise and disturbance that would have a significantly harmful effect on the living conditions of the neighbouring residents.

· Whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the [NPPF] taken as a whole.”

18. I pause there to note that the question in the second bullet point was phrased thus on the basis that the relevant development plan was out of date: it used the very wording from the second bullet point in paragraph 14 appropriate to those circumstances (quoted at paragraph 4 above). Of course, by the time of the Inspector’s decision, there was an up to date plan, namely the newly adopted Stafford Plan. As a consequence, that was not the right approach. Under the NPPF, rather than there being a presumption for development because there was no up to date plan, where the presumption lay depended upon whether the development was or was not in accordance with the new Stafford Plan. If it was in accordance with that plan, the presumption was in favour of development; if it was not, then the presumption was against. Therefore, as emphasised in Hampton Bishop, the sequential test for the Inspector was consequently for her to ask, first, whether the proposal accorded with the Stafford Plan as a whole. If it did, the determination was required to be made in accordance with the plan unless material considerations indicated otherwise. If it did not, then a refusal was required unless other material considerations made the proposal nevertheless acceptable in planning terms. All of that was uncontroversial before me, it being common ground that the second bullet point in paragraph 6.1.1 of the Statement of Common Ground was merely a relic. As will be seen, the Inspector was in any event not misled by it.

19. In respect of the main substantive issue identified by the parties – namely whether the additional traffic generated by the proposed development would result in unacceptable levels of noise and disturbance for the locality, notably for those living in Spode Close – the Claimant relied upon a report dated 20 May 2014 of C Mark Dawson (a consultant noise and vibration expert, and a Director of Wardell Armstrong), which set out an assessment of the impact of the noise associated with the predicted additional traffic at existing residential properties, notably, in Spode Close; and a further noise assessment dated 1 November 2013 by Bill Whitfield, the Managing Director of a company called Noise.co.uk.

20. A vehicle count conducted in May 2014 recorded two cars in the morning peak, one in the evening peak and over the 12-hour day period 21 vehicle movements in Spode Close; all, or almost all, of course being related to one of the five houses in that close. It was estimated that, after the development, there would be 63 vehicles in the morning peak, 76 vehicles in the evening peak and 623 vehicles in the same 12-hour period. It compared those levels with the morning peak traffic levels at the time of the survey in Crestwood Road (109 vehicles per hour) and Common Lane (140 vehicles per hour).

21. Mr Dawson conducted a noise monitoring survey, noting the noise levels in decibels in Spode Close, and noting the ambient noise from the nearby M6. In his opinion, were the proposal to go ahead, there would be no material change in the average noise levels in decibels; and the Council’s own Environmental Health Department raised no objection to the proposal on the basis that the traffic noise would not amount to a statutory nuisance. Nor did the highway authority object.

22. The Council did however maintain their opposition on the ground that the additional noise and disturbance caused by the additional vehicle movements in the close would cause a material loss of amenity to the residents there. The Claimant denied there would be any such loss.

23. In her decision, reflecting the Statement of Common Ground, the Inspector consequently identified “the main issue” before her, as follows (paragraph 7):

“The main issue is the effect of the development proposed on the living conditions of neighbouring residents with particular regard to noise and disturbance.”

24. The Inspector dealt with the issue thus:

“15. The Council does not dispute the science of the technical evidence submitted per se, it is rather the conclusion of that evidence which is at issue. I am in agreement with the Council that the assessment of the living conditions that residents currently experience in the area, and Spode Close, in particular, is necessarily a subjective judgment. As such, a purely scientific appraisal of the effects of the scheme may find it more difficult to assess this particular element.

16. The fact is that the evidence does show that, when compared with the existing situation, there would be a significant increase in the volume of traffic travelling along Spode Close in particular and other estate roads close to the appeal site as a result of the development proposed. There are several highway features including junctions and a ‘pinch point’ which those vehicles would need to negotiate before exiting the wider housing estate. This would result in several manoeuvres having to be undertaken by the drivers of those vehicles including braking, accelerating and general engine noise. The nature of that noise would be different to the background hum of traffic from the M6 motorway as it would be experienced by residents at close quarters and would be intermittent throughout the day.

17. Vehicles accessing the development proposed would be unlikely to be a constant feature throughout the day and into the evening. I understand that the majority of dwellings on the Close have front facing living rooms and front facing main bedrooms situated approximately 5 metres from the highway. Many residents are also retired and therefore more likely to be at home during the day. Residents using their main living areas and bedrooms would therefore be likely to experience the noise associated with vehicles using the proposed access at close quarters. This is particularly so during the summer when they may choose to leave their windows open and therefore would be more likely to be disturbed by the comings and going of future residents accessing the proposed development. This would be materially different to the quiet and peaceful living environment which residents on Spode Close in particular currently enjoy. The appeal proposal would therefore have a significantly harmful [effect] on the living conditions which those residents currently enjoy as a result.”

25. She said that she also had concerns about access to the children’s play area at the head of Spode Close, concluding that the proposed access to the new development through the close would materially affect the amenity value of that play area. She concluded on the issue as follows:

“19. Accordingly, I conclude that the proposal would be harmful to the living conditions of neighbouring residents with particular regard to noise and disturbance. The proposal would therefore conflict with [SP]7(l) of [the Stafford Plan] which, among other things, states that development will, in principle, be acceptable because it will not adversely affect the residential amenity of the locality. The proposal would also conflict with one of the core planning principles of the [NPPF] which states that planning should always seek to secure a good standard of amenity for all existing occupants of buildings (paragraph 17).”

26. There was a further issue before the Inspector. As I have indicated, it was proposed that the development would have only one vehicular access. The highway authority had no objection to the development, subject to a requirement that emergency access being secured by a condition to ensure safe and suitable access to the development in the event of an emergency. The Claimant provided an illustrative plan, showing such an access across open land – owned by a third party – adjacent to the existing play area.

27. The Inspector dealt with the issue thus:

“20. I note that there is some dispute as to whether a suitable emergency access for the appeal scheme could be created. An illustrative plan was submitted by the appellant at the appeal which did show that one could be created. However, this would involve building the emergency access on part of the public open space next to the existing play area. At the hearing, it was indicated to me that this area of land is owned by an independent estate management company and not the appellant. As such, it does not appear to be within the control of the appellant. I note that the provision of an emergency access was a requirement of the highway authority to be secured via a condition to ensure that safe and suitable access could be maintained for the proposed development in light of an emergency occurring. Therefore notwithstanding the concerns that the Council and third parties have expressed regarding this access, in light of this uncertainty, I am not convinced that a suitable emergency access would be capable of being implemented, were the appeal to succeed. This is a matter which adds to the harm that I have identified above.”

28. Having considered other matters, not at the focus of this appeal, she concluded overall:

“34. Drawing matters together, I have acknowledged the benefits associated with the development proposed in my decision. These include the provision of 114 additional dwellings, of which 40% would be affordable units, the provision of recreational open space (both on and off site), a financial contribution towards education provision and the implementation of a transport plan. There are also areas of agreement that exist between the parties including that the principle of the development proposed would be acceptable and that the appeal site is within a sustainable location. There are also several neutral matters, whereby a lack of harm does not weigh in favour of the proposal.

35. Whilst I have had regard to the benefits of the scheme, I conclude that they do not demonstrably outweigh the harm that I have identified above. This is because this particular appeal proposal would result in a significant increase in vehicle movements that would substantially increase the levels of noise and disturbance significantly above that currently experienced by residents in Spode Close in particular and other surrounding roads, albeit to a lesser extent. This would be significantly harmful to the living conditions of those residents as a result. I have also found that the proposal would not provide a safe and suitable emergency access and this adds to my concerns.

36. For the reasons given above, having regard to all other matters raised, I conclude that the appeal should be dismissed.”

The Grounds

29. Mr Richards relies upon four grounds to challenge the Inspector’s decision to refuse the Claimant’s appeal, as follows.

Ground 1

30. Mr Richards submits that the Inspector failed to determine the appeal as the statutory framework requires. The Council accepted that the proposal broadly complied with the development plan, save for the Policy SP7(l); and the Inspector found that the proposal was in conflict with (and only with) that particular policy. However, although the Inspector therefore determined what she had called “the main issue”, that was not determinative. She ought to have considered, and decided, whether the conflict between the proposed development and Policy SP7(l) was such that the development did not accord with (i) Policy SP7 as a whole, and (ii) the development plan as a whole. If it did not comply with that plan as a whole, then the presumption was against the development; but if, despite not complying with Policy SP(l), it *did* comply with the plan as a whole, then the presumption would have been in favour of the development. However, the Inspector did not decide whether it was in accord with the plan or not; she simply adopted a presumption against the development. It is common ground that the development otherwise complied with the Stafford Plan, and has significant benefits set out in the Statement of Common Ground before the Inspector. Therefore, if the Inspector had considered the issue and found the development was in accordance with the plan and thus the presumption had been the other way, it cannot be assumed that the result of the appeal would have been the same.

31. Mr Kimblin for the Secretary of State accepted that, on the basis of Hampton Bishop, the Inspector was required to bring her mind to bear upon – and answer – the question of whether, despite her finding that the development would be in conflict with Policy SP7(l), it was in accord with the Stafford Plan as a whole. The plan was brand new, and no exception to the general rule applied. However, he submitted that, when the Inspector’s decision was looked at as a whole and in its full context, it is clear that she did consider the vital question and implicitly determined that, because of the conflict with Policy SP7(l), the development did not accord with the plan as a whole.

32. I do not find this an easy issue. I am sensitively aware of the need to read an inspector’s report in a broad and sensible way, and to avoid imposing too high a standard of expectation on them. I have also considered carefully Hampton Bishop, in which the decision-maker did not expressly state that the development was or was not in accordance with the development plan, but nevertheless the Court of Appeal upheld its decision to grant planning permission. However, after particularly careful consideration, on the facts of this case, I am persuaded by Mr Richards.

33. In coming to that conclusion, I have particularly taken into account the following:

i) On the evidence before her, it was open to the Inspector to find that the proposed development would be materially detrimental to the residential amenity of residents in Spode Close, and thus in conflict with Policy SP7(l).

ii) I do not find compelling Mr Richards’ submission that, having found that conflict, the Inspector erred in not proceeding to determine whether the development was in conflict with Policy SP7 looked at as a whole. Whilst the various criteria set out in the policy are all related to the location of the development, they are essentially disparate.

iii) However, as Mr Kimblin properly concedes, it was necessary for the Inspector, having found the development to have been in conflict with one policy within the development plan, to proceed to determine whether the development was or was not in accordance with the plan as a whole.

iv) I accept Mr Kimblin’s forceful submission that whether the Inspector considered and determined that the development was or was not in accordance with the plan as a whole is a question of substance and not form. The use of a mantra in an inspector’s decision is not necessary; and, if an inspector uses such a mantra, that may not necessarily be sufficient. However, if an inspector fails to indicate expressly that he has at least considered that issue, it may be more difficult for a court to find that he has done so. Where an inspector has identified conflicts between a development and the plan, if he sets out his reasoning, brief as it might be, as to why he considers that the development is not in accordance with the development plan or, despite conflicts with individual policies, that it is, that will be helpful not only to those involved in the application but also to the court in any later challenge. Such express reasoning will usually make clear that the inspector has brought his mind to bear upon the relevant issue and has drawn a rational conclusion.

v) In this case, unfortunately, the Inspector gave no such assistance. It is true that there were no specific submissions on the issue – such submissions would have been helpful, and may well have prevented the Inspector falling into error – but the Claimant certainly did not concede that, if (contrary to its primary submission) the Inspector found that there was material harm to the residential amenity for those living in Spode Close, then it would necessarily follow that the development would not be in accord with the plan. That would of course depend upon, not the mere presence of material harm, but the degree of that harm as assessed by the Inspector; and thus the extent of conflict with the plan, given that the development was otherwise fully in accordance with the plan. As I have indicated, the Council accepted that the development broadly complied with the development plan; and, indeed, complied with it in every way other than Policy SP7(l). For its part, it did not submit that, if the Inspector found that there was some (i.e. any) material unacceptable harm in respect of the residential amenity of the five households in Spode Lane that it necessarily followed that the development did not accord with the plan as a whole. In the circumstances of this case, such a submission may have been, at least, difficult.

vi) Looking at the Inspector’s decision in a suitably straightforward way, even given that it was written for a knowledgeable audience, it is not possible to say that the Inspector grappled with this issue. The Inspector of course referred to the development plan in her decision; but it is not possible to say that it was at the forefront of her mind, or that she gave it the prominence that the scheme requires. There is simply no evidence that she did so. In the absence of evidence, on the facts of this case, it is not possible to assume that she did. She did not refer at all to section 38(6). This is not a case (as was Hampton Bishop) where, even in the face of coyness from those representing the Secretary of State and the local authority (coincidentally, Mr Kimblin), the court is able to say, confidently, that the decision-maker had decided that the development was or was not in accordance with the development plan. The Inspector said that benefits did not outweigh the harm she had identified – which, on the face of it, is suggestive of a conclusion that the development was *not* in accordance with the plan – but, on the facts of this case (where the conflict with Policy SP7(l) was the only conflict with the development plan alleged, and that conflict may be regarded as less fundamental than the primary conflict in Hampton Bishop which concerned the policy for criteria for allowing development in the open countryside), I cannot confidently say that she brought her mind to bear on that issue and made an unexpressed finding to that effect. Although I accept that this case did not involve a particularly complex judgment as to whether the development did or did not accord with the plan, the nature of the policy conflict here is very different from that in Hampton Bishop.

vii) Therefore, regrettably, the Inspector erred in law.

viii) In my judgment, the error was clearly material. In paragraph 35 of her decision, with admirable clarity, the Inspector set out the presumption upon which she acted, namely a presumption in favour of grant, concluding that the benefits of the scheme did not “demonstrably outweigh” the harm she had identified. In the circumstances of this case, in which the proposed development had clear planning benefits which the Council accepted, I cannot say that, if the presumption had been the other way, the result of the appeal would inevitably have been the same. Again, in that way, this case is significantly different from Hampton Bishop (see [42]).

34. For those reasons, Ground 1 is made good.

Ground 2

35. Mr Richards submitted that the Inspector misapplied the presumption in favour of sustainable development as stated in paragraphs 14 and 49 of the NPPF and Policy SP1 of the Stafford Plan.

36. I can deal with this ground very shortly; because, in the course of debate, Mr Richards accepted that, in substance, it is merely a different way of putting Ground 1. In this case, an up to date plan being in place, it was common ground that the presumption for or against grant was effectively determined by the question whether the development was or was not in accordance with the development plan as a whole.

37. This ground therefore adds nothing of substance to Ground 1.

Ground 3

38. Mr Richards submitted that the Inspector failed to give adequate reasons for finding that the residential amenity of those living in Spode Close would be materially harmed as a result of the additional traffic noise.

39. I would have been unpersuaded by this ground, had it stood alone.

40. The Inspector was entitled – indeed, bound – to take into account the acoustic evidence, but was also entitled to take into account the results of her own site visit and her own judgment to form a view as to how living conditions in the relevant houses would be affected by the development. That is what she did. She was entitled to take into account, as she did, that the nature of the post-development noise and disturbance would be different from that being experienced by those residents now. Currently, they have the background noise of the M6 which is not intrusive. As a result of the development, they would have vehicles regularly braking, accelerating and producing general engine noise that would be significantly intermittent, close range and different in quality and type, such that the Inspector was entitled to find (as she did) that the residential amenity of those living in the close would be harmed, especially in the summer when windows would be open, and particularly as their living rooms were at the front of the house by the road.

41. I accept that her conclusion that there would be an *unacceptable* degree of harm to the residents of Spode Close as a result of the development is possibly surprising – because the traffic movements in the close will be less than those that currently occur in neighbouring streets which appear to be similar in nature, and there is no obvious reason why the nature of the noise and disturbance would be greater. However, as she was required to do, the Inspector carefully assessed the nature of the noise and disturbance in Spode Close now and with the proposed development, and came to the conclusion that there would be an unacceptable diminution in the residential amenity of the close residents as a result of the development. That is a classic evaluative judgment for the planning decision-maker (here, the Inspector) to make.

Ground 4

42. Finally, Mr Richards submitted that the Inspector failed to take into account the fact that the delivery of emergency access could be secured by a condition attached to a grant of planning permission. There is, in my view, force in this ground.

43. Mr Richards submitted that the Inspector was wrong to have weighed in the balance against the proposed development the fact that development did not enjoy the provision of an emergency access. She ought to have simply attached conditions, as suggested by the Claimant, e.g. requiring details for an emergency access be submitted for approval before construction work started, and connection of such access to the highway before the first house was occupied. The development could only proceed if the conditions were complied with; and so the absence of a certain emergency access was not a factor to be weighed in the planning balance against the development.

44. In response, Mr Kimblin submitted that the Inspector was not only concerned about the uncertainty of deliverability, but also about the adverse effect the proposed emergency access on the public open space next to the play area, to which she made explicit reference in paragraph 20 of her decision (quoted at paragraph 27 above). That was something which she could properly take into account in assessing whether the benefits outweighed the aggregate harm.

45. That is true, so far as it goes; but the Inspector appears to have considered that the uncertainty of deliverability also weighed in the balance. In paragraph 20 of her decision, she said:

“Therefore notwithstanding the concerns that the Council and third parties have expressed regarding this access, in light of this uncertainty, I am not convinced that a suitable emergency access would be capable of being implemented, were the appeal to succeed. *This* is a matter which adds to the harm that I have identified above.” (emphasis added).

Therefore, however she dealt with the harm to the open public space, on a straightforward reading of her decision, the Inspector does appear to have taken the problems of implementing an emergency access into account when balancing harm and benefits.

46. The highway authority indicated that it wished to see a condition as to emergency access, and the Claimant proposed conditions. I agree with Mr Richards: the matter could have been dealt with by way of condition(s), and the Inspector erred in taking this into account as a factor in the balance against the proposal in the manner that she did.

47. It is another issue as to whether this error was material – because the Inspector clearly regarded the harm caused to the residential amenity of those living in Spode Close as the main issue and the main source of unacceptable harm. However, in the light of my findings under Ground 1, it is unnecessary for me to determine materiality on this ground.

Conclusion

48. For those reasons, I shall allow the application, and quash the Inspector’s decision of 24 October 2014.