



Neutral Citation Number: [2015] EWHC 1958 (Admin)

Case No: CO/79/2015

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15 July 2015

**Before :**

**THE HONOURABLE MRS JUSTICE LANG DBE**

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**Between :**

**OLD HUNSTANTON PARISH COUNCIL**

**Claimant**

**- and -**

**(1) SECRETARY OF STATE FOR  
COMMUNITIES AND LOCAL  
GOVERNMENT**

**(2) HASTOE HOUSING ASSOCIATION  
LIMITED**

**(3) KINGS LYNN AND WEST NORFOLK  
BOROUGH COUNCIL**

**Defendants**

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**Luke Wilcox** (instructed by **Humphries Kerstetter LLP**) for the **Claimant**  
**Richard Honey** (instructed by the **Government Legal Service**) for the **First Defendant**  
**Heather Sargent** (instructed by **Stephens Scown LLP**) for the **Second Defendant**  
The **Third Defendant** did not appear and was not represented

Hearing date: 30 June 2015  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
**MRS JUSTICE LANG DBE**

**Mrs Justice Lang:**

1. The Claimant applies under section 288 of the Town and Country Planning Act 1990 (“TCPA 1990”) to quash the decision of the First Defendant, made by an Inspector (Ms S. Stevens) appointed by him, on 1 December 2014, to grant planning permission for an affordable housing development (15 dwellings) on land at Coach House, Cromer Road, Old Hunstanton (“the Site”).
2. The Site is within the administrative boundary of the Claimant Parish Council. The Second Defendant is the proposed developer of the Site.
3. The Site is approximately 0.5 hectares of a green field site (an agricultural field) on the southern edge of Old Hunstanton. It is located on the eastern side of Cromer Road (A149). The proposed development is for 15 residential units of affordable housing. As it is outside the settlement boundary of Old Hunstanton, the issue is whether planning permission could be granted, applying a Rural Exception Site policy.
4. The Third Defendant, as local planning authority, refused permission for the development on 6 February 2014, on the grounds that it would result in a reduction in the separation between the settlements of Hunstanton and Old Hunstanton, thus causing unacceptable levels of harm to the character of Hunstanton and Old Hunstanton and to the character of the countryside. The harm would not be outweighed by the benefit of providing affordable housing, and so would be contrary to the National Planning Policy Framework (“NPPF”) paragraphs 54, 61 and 63, and to Core Strategy Policies CS06, CS08 and CS12.
5. In her Decision, dated 1 December 2014, the Inspector allowed the Second Defendant’s appeal and granted planning permission. She concluded that the proposed development (combined with a planning obligation under section 106 TCPA 1990 to ensure that the dwellings remained affordable) would comply with Core Strategy Policies CS06, CS08 and CS12 and the National Planning Policy Framework (“NPPF”). In her view, the benefits of the scheme, in terms of delivering affordable housing, outweighed the limited harm to the character and appearance of the area, particularly with regard to the coastline and separation of settlements ([25]).

**The Claimant’s grounds**

6. The Claimant submitted that the Inspector misinterpreted the development plan in general, and in particular Core Strategy Policy CS06 and the Rural Exception Site policy, by assuming that the requirement for local housing need, to justify residential development on a green field site abutting the rural village of Old Hunstanton, could be met by reference to housing need in the town of Hunstanton. On a proper interpretation of the development plan, local housing needs had to be established in the immediate settlement of Old Hunstanton and other nearby rural villages or hamlets. Although the Claimant raised this key point of principle in its objections, the Inspector did not address it, adequately or at all, in her reasons.
7. In response, the First and Second Defendants submitted that the Inspector correctly interpreted the development plan, in particular the Rural Exception Site policy. It refers to local housing needs, and the needs of the local community, and ought not to

be read restrictively, so as to be limited to Old Hunstanton or other nearby rural villages or hamlets. The Inspector was entitled to include the housing needs of the nearby town Hunstanton and the large village of Heacham in the assessment of local need. The Inspector's reasons for her decision were adequate. Both the Second and Third Defendants were in agreement as to the proper interpretation of the Rural Exception Site policy so it was not a "principal important controversial issue" (per Lord Brown in *South Bucks District Council and another v Porter (No 2)* [2004] 1 W.L.R. 1953).

### **Legal framework**

8. Under section 288 TCPA 1990, a person aggrieved may apply to quash a decision on the grounds that (a) it is not within the powers of the Act; or (b) any of the relevant requirements have not been complied with and in consequence, the interests of the applicant have been substantially prejudiced.
9. The general principles of judicial review are applicable to a challenge under section 288 TCPA 1990. Thus, the Claimant must establish that the decision-maker misdirected himself in law or acted irrationally or failed to have regard to relevant considerations or that there was some procedural impropriety.
10. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties v Secretary of State for the Environment* (1978) 42 P & CR 26. As Sullivan J. said in *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, at [6]:

"An application under section 288 is not an opportunity for a review of the planning merits of an Inspector's decision."
11. The determination of an application for planning permission is to be made in accordance with the development plan, unless material considerations indicate otherwise: section 38(6) of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004"), read together with section 70(2) TCPA 1990. The NPPF is a material consideration in planning decision-making (see NPPF paragraphs 11 to 13).
12. In *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, [1997] 1 WLR 1447, at 1458B, Lord Clyde considered the equivalent Scottish provision to section 38(6) PCPA 2004, and held that it required the decision-maker to give priority to the development plan, applying a presumption that the development plan will govern the decision unless material considerations indicate otherwise. Beyond that, the assessment of the facts and the weighing of the considerations were left in the hands of the decision-maker.
13. This statement of the law was approved by the Supreme Court in *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13, [2012] P.T.S.R. 983, per Lord Reed at [17].
14. Lord Reed (with whose judgment Lord Brown, Lord Hope, Lord Kerr and Lord Dyson agreed) rejected the proposition that each planning authority was entitled to determine the meaning of development plans from time to time as it pleased, within the limits of rationality. He said, at [18]:

“18. ... The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained.....these considerations suggest that, in principle, in this area of public administration as in others (as discussed, for example, in *R (Raissi) v Secretary of State for the Home Department* [2008] QB 836), policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context. They are intended to guide the decisions of planning authorities, who should only depart from them for good reason.

19. That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. 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 (*Tesco Stores Ltd v. Secretary of State for the Environment* [1995] 1 WLR 659, 780 per Lord Hoffmann).”

15. Supporting text is relevant to the interpretation of policies, but it is not itself policy. It cannot operate so as to impose a policy requirement which is not contained in the policy itself (*R (Cherkley Campaign) v Mole Valley DC* [2014] EWCA Civ 567, per Richards LJ at [16]).
16. A decision letter must be read (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well informed reader who understands the principal controversial issues in the case: see Lord Bridge in *South Lakeland v Secretary of State for the Environment* [1992] 2 AC 141, at 148G-H; Sir Thomas Bingham MR in *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263, at 271; *Seddon Properties v Secretary of State for the Environment* (1981) 42 P & CR 26, at 28; and *South Somerset District Council v Secretary of State for the Environment* (1993) 66 P & CR 83.

**Interpretation of the development plan**

17. The Third Defendant's Core Strategy was adopted in July 2011.
18. CS02 on Settlement Hierarchy sets out a six tier hierarchy which ranks settlements according to their size, range of facilities and capacity for growth.
19. In summary, the tiers are:
  - i) **Sub-regional centre:** Kings Lynn
  - ii) **Main towns:** Hunstanton, Downham Market
  - iii) **Settlements adjacent to Kings Lynn and the main towns:** none relevant to this case.
  - iv) **Key Rural Service Centres:** 20 are listed of which only Heacham is relevant to this case.
  - v) **Rural villages:** 32 are listed of which only Old Hunstanton is relevant.
  - vi) **Smaller villages and hamlets:** 54 are listed of which only Ringstead and Holme next the Sea are relevant.
20. The Policy includes the following statements:

“Decisions ... on the location and scale of new development will be taken on the basis of the borough settlement hierarchy”

“Land allocation in each of the settlement tiers will be in accordance with the principles set out in Policy CS09 Housing Distribution”

“**Rural Villages** Limited minor development will be permitted which meets the needs of settlements and helps to sustain existing services in accordance with Policy CS06 Development in rural areas.”
21. The supporting text states:

**“Rural villages**

6.1.13 Rural villages have a limited but locally important role meeting the needs of the immediate village. Sustaining the existing services is a key priority. These settlements may see some limited growth, which will help support surrounding rural areas (e.g. some small-scale infilling or affordable housing).”
22. The Glossary to the Core Strategy defines the Rural Exceptions Site policy as follows:

**“Rural Exceptions Policy/Site** - a development or Development Plan document may allocate small sites within

rural areas solely for affordable housing, which would not otherwise be released for general market housing.”

23. The Rural Exception Site policy is to be found in Policy CS06 and CS09.
24. Policy CS06 is the Third Defendant’s policy on “Rural Areas”.
25. The supporting text to Policy CS06 provides:

“6.5.1 The Council will continue to encourage a strong hierarchy of rural settlements by developing competitive, diverse and thriving rural enterprise that supports a range of jobs. Rural settlements provide essential services and facilities to serve visitors to the borough as well as the local communities.

6.5.2 In line with national planning guidance for housing (PPS3), the Council’s approach to housing in rural areas will seek to sustain rural communities, identifying a need for both affordable and market housing. Rural exception sites can be used to enable the Council to deliver affordable housing in rural communities on sites not otherwise available for residential development.” (emphasis added)

26. Policy CS06 states:

**“CS06 Development in Rural Areas**

...

Provision will be made for a total of at least 2,880 new homes within or adjacent to selected Key Rural Service Centres.

In the Rural Villages, Smaller Villages and Hamlets, more modest levels of development, as detailed in Policy CS09, will be permitted to meet local needs and maintain the vitality of these communities where this can be achieved in a sustainable manner, particularly with regard to accessibility to housing, employment, services and markets, and without detriment to the character of the surrounding area or landscape. Sites may be allocated for affordable housing or exception housing in accordance with criteria to support the housing strategy (emphasis added)

.....

Beyond the villages and in the countryside, the strategy will be to protect the countryside for its intrinsic character and beauty, the diversification of its landscapes, heritage and wildlife, and its natural resources to be enjoyed by all. The development of green field sites will be resisted unless essential for agricultural or forestry needs.”

27. The Core Strategy does not include “criteria” for the allocation of affordable housing or exception housing. However, such criteria are found in the Third Defendant’s “Affordable Housing Policy”, adopted in April 2011, which I consider below.
28. Policy CS09 is the Third Defendant’s policy on Housing.
29. The supporting text to policy CS09 explains:

“7.2.12 In accordance with the Settlement Hierarchy Policy CS02, the majority of new housing (90%) will be located either within the main towns, settlements adjacent to the main towns and in the settlements designated as Key Rural Service Centres...”

“7.2.15 In Rural Villages which are reliant for many needs on nearby larger centres it would not be appropriate to locate significant amounts of new housing growth here. Any significant expansion would be unsustainable. However there will be opportunities for limited infilling and housing for specific local needs without detriment to the form and character.”

“7.2.18 Affordable housing ... is unlikely to be delivered by the market alone. The majority of new affordable housing will be delivered through Section 106 planning agreements....Other sites will provide purely affordable housing and will include rural exception sites. Such development is likely to be dependant upon the Registered Social Landlord securing grant funding ...”

30. Policy CS09 itself then provides:

**“Key Rural Service Centres** – Provision will be made for at least 2,880 new dwellings in total

**Rural Villages** - Provision will be made for at least 1,280 new dwellings in total (with allocations for at least 215 new homes) in the rural villages. New housing allocations will be restricted solely to the provision of small scale infilling or affordable housing allocations or potential exceptions housing to meet the identified needs of the local community, and will be identified through the Site Allocations DPD (emphasis added)

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It is appropriate to consider the exception provision of affordable housing (maintained in 'perpetuity') [are] within the Rural Villages classification in Policy CS02.” (Square brackets added, as the word “are” appears to be superfluous)

31. The Site Allocations and Development Management Policies Pre-Submission document (not yet finalised) shows a population of 628 people in Old Hunstanton, with 6 dwellings as a guide number based on population, but none allocated because of an absence of suitable sites.
32. It is apparent from paragraph 6.5.2 of Policy CS06, and the wording of the Glossary definition, that the Third Defendant was intending to give effect to Planning Policy Statement 3 (PPS3). Although it has now been replaced by the NPPF, the First Defendant submitted, and I accept, that national policy has remained the same in this regard. In those circumstances, it is appropriate for me to have regard to PPS3 to assist in the interpretation of the Third Defendant's policy.
33. PPS3 provides:
- “30. In providing for **affordable housing in rural communities**, where opportunities for delivering affordable housing tend to be more limited, the aim should be to deliver high quality housing that contributes to the creation and maintenance of sustainable rural communities in market towns and villages....Where viable and practical, Local Planning Authorities should consider allocating and releasing sites solely for affordable housing, including using a **Rural Exception Site Policy**. This enables small sites to be used, specifically for affordable housing in small rural communities<sup>1</sup> that would not normally be used for housing because, for example, they are subject to policies of restraint. Rural exception sites should only be used for affordable housing in perpetuity. A Rural Exception Site policy should seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection, whilst also ensuring that rural areas continue to develop as sustainable, mixed, inclusive communities.”
34. The statutory provisions in the footnote to PPS3 set out the rural areas in Norfolk which are “designated rural areas” for the purposes of tenants’ “right to buy”. In a designated rural area, restrictions may be imposed on re-sales, to protect stocks of social housing. Only parishes with 3,000 or fewer inhabitants are eligible and the population density must be below a specified level. The designated parishes in West Norfolk include Old Hunstanton, Holme next the Sea and Ringstead but not Heacham or Hunstanton (Schedule 1 to the Housing (Right to Acquire or Enfranchise)(Designated Rural Areas in the East Order 1997/623). Some of the Key Rural Service Centres listed in CS02 are designated rural areas, by virtue of their small size, but not Heacham, which has a population well in excess of 3,000.

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<sup>1</sup> Small rural settlements have been designated for enfranchisement and right to acquire purposes (under Section 17 of the Housing Act 1996) by SI 1997/620-25 inclusive and 1999/1307



35. In my judgment, the proper interpretation of the Third Defendant's Rural Exception Site policy is as follows:

- i) Its purpose is to provide affordable housing in small rural communities (CS Glossary definition; CS06 (cited and underlined at [26]); CS06 supporting text (cited and underlined at [25]); CS09 (cited and underlined at [30]; PPS3). Although the CS Glossary definition is broad and refers to "rural areas" and PPS3 refers to affordable housing in "rural communities in market towns and villages", PPS3 also indicates that the Rural Exceptions Site policy is specifically for housing in "small rural communities", as defined. These are designated rural parishes with fewer than 3,000 inhabitants. Policies CS06 and CS09 only expressly provide for the Rural Exceptions Site policy to be applied in the categories of "rural villages" and "smaller village and hamlets". Whilst Policy CS02 and the settlement hierarchy is relevant to all development, including housing, it sets out general policy and does not itself make any reference to the locations in which the Rural Exceptions Sites policy may operate.
- ii) Such housing development is intended "to meet local needs and to maintain the vitality of these communities" (CS06 (cited and underlined at [26] above)) and "to meet the identified needs of the local community" (CS09 (cited and underlined at [30])). When read together with the references I have listed at (i) above, I consider that the needs referred to here are primarily the needs of the small rural settlement in which the development site is based. In my view, this interpretation is consistent with both the wording and the objective of the Rural Exception Site policy, as set out in PPS3 and Policies CS06 and CS09. The policy is, exceptionally, relaxing planning constraints on development in rural areas so as to meet the needs of small rural communities, not to meet the housing needs of neighbouring towns and larger conurbations.
- iii) The term "local" in the phrases "local needs" and "local community" is not defined. I consider that the natural meaning of the term, in this context, is not necessarily limited to the needs of the settlement in which the development is situated. It could also extend to the needs of other small rural settlements and communities nearby, if in the judgment of the decision-maker, they are "local".
- iv) In furtherance of the policy objective of providing affordable housing in rural communities, development may be permitted at rural sites, including green field sites, which would not generally be approved for this purpose (CS Glossary definition; PPS3; CS06 supporting text (cited and underlined at [25])).
- v) This is an exception to the CS general strategy which is to protect the countryside and not to allow green field sites to be developed for housing (CS06 (cited and underlined at [26])).

### **Other material considerations**

36. The NPPF is consistent with the policy in PPS3. It defines “Rural exception sites” in its Glossary as:

“Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. Small numbers of market homes may be allowed at the local authority’s discretion, for example where essential to enable the delivery of affordable units without grant funding.”

37. Paragraphs 54 – 55 NPPF provide:

“54. In rural areas .... local planning authorities should be responsive to local circumstances and plan housing development to reflect local needs, particularly for affordable housing, including through rural exception sites where appropriate...”

“55. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances ...”

38. The Third Defendant’s “Affordable Housing Policy”, was adopted in April 2011. It refers to PPS3 in paragraphs 3.1 and 3.2. It provides, so far as is material:

#### **“General Policy Principles**

5.6 The main route for delivery of affordable housing in rural areas is the ‘exceptions policy’ that allows for small scale development outside of a village’s development boundary. Such schemes aim to meet the identified needs of households with a connection to the village. The aim is to meet rural need and help sustain communities by giving preference through the allocation of those homes to those with established local connections.”

#### **“Rural Delivery**

7.1 High demand for housing in some rural areas has pushed the price of housing out of the reach of many local people. In some areas, particularly in the northern parts of the borough, there have been additional pressures because of the demand for second homes.

7.2 There are very limited opportunities for RSLs to compete with private developers and acquire development land in rural areas because the price of land would normally make an affordable housing scheme unviable.

7.3 It is possible to develop housing in small rural settlements (with populations of 3,000 or under as designated in s.17 of the 1996 Housing Act and various statutory instruments) under a Rural Exceptions Site policy. Policy CS09 of the Core Strategy Document sets out the principle whereby affordable housing can be developed on land outside the development boundary which would not normally be used for housing. As such developments are exceptional and only for affordable housing, the value of the land is much lower in value and viable for an RSL to develop.

Housing developed under these policies must meet local identified need with local people given preference for these homes .... Future allocations ... must be in accordance with the local connection criteria.”

**“7.1 Small Rural Settlements (3,000 and below) – Exception Site policy**

7.1.1 Under PPS3 there is a requirement that evidence of housing need be provided before planning permission can be granted for rural exception site development and that any proposed development will ‘address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection whilst also ensuring that rural communities continue to develop as sustainable, mixed and inclusive communities.

7.1.2 The borough-wide Housing Needs Survey 2007 demonstrated that housing need exists throughout the area. In many cases the Housing Register can provide a detailed indication of need and demand for affordable housing in specific parishes.

7.1.3 It is important to give regard to the sustainability of developing in a small rural community. It is not desirable to develop affordable housing in locations without reasonable access to some amenities and services. For this reason and for others mentioned above support for new exception site developments will be focussed in those settlements that are within either the Key Rural Service Centre or Rural Villages category of the Core Strategy Settlement Hierarchy. In determining which settlements to concentrate on within those categories priority will be given to those settlements that have

a high housing need and have not benefited from an existing exception site scheme.

7.1.4 The local connection criteria applied to exception sites are attached in Appendix C. Whilst it is desirable to have a common 'local connection criteria' there may be exceptional circumstances where the criteria can be varied to reflect local circumstances.

....

7.1.6 'Rural Exceptions' sites will be small in scale. They will normally be restricted to a maximum of 15 dwellings."

39. In the next section, under the sub-heading "Rural Settlements (over 3,000 settlement size)", the policy document goes on to consider the provision of affordable housing stock by means other than Rural Exception Site development. I consider that, consistently with the guidance in PPS3 that Rural Exceptions Sites should be in rural communities with a population size of 3,000 and below, the meaning of the wording in the policy is that the Rural Exception Site policy will be applied in the small rural communities, not in those with a population above 3,000. I acknowledge that the distinction between small and large rural communities is not spelt out in the NPPF in the way that it was in PPS3. However, the Third Defendant's Core Strategy and 'Affordable Housing' policy were drafted and adopted in accordance with PPS3.
40. The 'local connection criteria' referred to in paragraph 7.1.4 of the policy are set out in Appendix C. They indicate how housing units will be allocated by the Third Defendant, once built. Once all those in housing need who fulfil criteria 1 have been housed, the Third Defendant will apply each of criteria 2 to 6, in turn, until the houses are filled. The criteria are as follows:
- "1. Existing residents who have lived in the parish for more than 12 months needing separate or alternative accommodation.
  2. Past residents of the parish who lived in the parish for a minimum period of 5 years and who moved away within the last 3 years because no suitable accommodation was available.
  3. People who need to live in the parish due to their permanent employment or offer of permanent employment.
  4. People who are not resident in the parish that need to live near family members currently residing in the parish.
  5. Existing residents of adjoining parishes.
  6. Existing residents who have lived in the Borough Council of King's Lynn and West Norfolk for a period of 5 years or more".

### **The evidence before the Inspector**

41. Old Hunstanton is an ancient seaside village, in a rural setting, with a population of about 628 people. Provisionally, the guide number of new dwellings is 6<sup>2</sup>.
42. Ringstead and Holme next the Sea are classified as “smaller villages and hamlets” in Policy CS02 and they are near to Old Hunstanton. No allocations are proposed for these settlements<sup>3</sup>; development will be “limited to specific identified needs only” (Policy CS02).
43. Hunstanton is a town about 2 miles from Old Hunstanton (though the shortest distance between the development boundaries of the two settlements is only about 230 metres). Local planning policy protects the separation between the settlements of Hunstanton and Old Hunstanton, to preserve their different characters, and to maintain the countryside. Hunstanton has a population of about 5,850 people. The Core Strategy, at paragraph 3.1.11, says it is an important service centre for the surrounding rural area, and a local employment centre providing jobs for the local population. It is also a successful seaside resort. Policy CS09 states that provision will be made for at least 580 new dwellings in Hunstanton.
44. Heacham is a large village between 4 and 5 miles from Old Hunstanton, and has a population of about 4,750 people. As one of the Key Rural Services Centres (CS02), it is earmarked for housing growth to support local housing needs and local employment opportunities (Policy CS09). The provisional guide number of dwellings based on population is 63<sup>4</sup>.
45. The planning officer advised members in his reports that there was evidence of a local need for affordable housing that was not being met; it was permissible to consider the housing needs of surrounding parishes such as Hunstanton, Ringstead and Holme next the Sea; and so there was a valid case for considering a Rural Exception site. The Third Defendant apparently accepted this advice, rejecting the proposal on a different ground, namely, harm.
46. The planning officer’s report stated that there were 33 households on the Council’s housing register from “Old Hunstanton and the adjoining parishes”. Of these, 2 were currently resident in Old Hunstanton, 22 in Hunstanton, 8 in Heacham and 1 in Ringstead. He considered that these figures probably underestimated the extent of the need, since not everyone in need was on the housing register. There was no evidence from either the Second or Third Defendants as to the connection, if any, which the households resident in Hunstanton and Heacham had with Old Hunstanton.
47. As set out in the planning officer’s report, the Second Defendant held an open meeting in Old Hunstanton in December 2013 at which 7 people, with a connection to Old Hunstanton, expressed an interest in the proposed dwellings, in their “comments forms”. The Second Defendant said it had also received 5 forms prior to the December meeting (there had been an earlier meeting in July in relation to a different site) and another 6 letters expressing interest after the meeting. The implication was

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<sup>2</sup> Site Allocations and Development Management Policies Pre-Submission document

<sup>3</sup> Site Allocations and Development Management Policies Pre-Submission document

<sup>4</sup> Site Allocations and Development Management Policies Pre-Submission document

that these letters were expressions of interest from people with a connection to Old Hunstanton, though this is not stated expressly. The forms and letters were not in evidence.

48. According to the Second and Third Defendants, there is a general shortage of affordable housing in the wider area generally. In Old Hunstanton and its nearby parishes, the turnover of property is low, particularly in family homes. Many local people find private sector housing in Old Hunstanton unaffordable as it is within the Higher Value Housing Market.
49. The Core Strategy identifies as social issues, at paragraph 3.2.3, that the Borough has an ageing population with significant retired populations, particularly in coastal areas such as Hunstanton. Second homes also have an impact on housing.

### **The Inspector's decision**

50. The Inspector found, at paragraph 24, that the proposed development complied with CS policies CS06, CS08, CS12 and the NPPF. CS08 and CS12 are not relevant to the issue before me. The Inspector did not refer to CS09 or the Affordable Housing policy. Whilst accepting that the Inspector is not writing an exam paper, it is one of several factors which indicate to me that insufficient regard was given to the proper interpretation of the relevant policies.
51. The Claimant submitted to the Inspector that the Core Strategy and the Rural Exception Site policy was being misapplied, because it was meeting the housing needs of the town of Hunstanton, not the local needs of Old Hunstanton. Regrettably the Inspector did not address this issue in her decision, nor did she explain how she interpreted the relevant policies. This is another factor which indicates that insufficient regard was given to the proper interpretation of the relevant policies.
52. In my judgment, the Inspector should have considered whether the proposed development would "meet local needs and ... maintain the vitality of these communities" and "meet the identified needs of the local community". The needs referred to are housing needs. The starting point ought to have been to identify the local communities whose needs were to be considered. On my interpretation of the policies, the relevant communities were Old Hunstanton, (in which the proposed development would be situated), and any other small rural communities which the Inspector found were "local" to Old Hunstanton e.g. Ringstead and Holme next the Sea. The proposed development could not be justified by reference to the housing needs of the town of Hunstanton, or the large village of Heacham, which each had populations well in excess of 3,000 people. The development plan does not permit towns to export their housing needs to green field sites in rural villages – this is not the intention of the Rural Exception Site policy, nationally or locally, as I have explained above.
53. Counsel for the First and Second Defendants informed me that in the appeal it was common ground between their clients that housing need in any of the settlements which were "local" to Old Hunstanton, such as Hunstanton and Heacham, could be taken into account to justify the application of the Rural Exception Site policy. They submitted that the Inspector proceeded on that basis. On reading the decision, I

consider that was indeed her approach. The Inspector's finding of housing need was general – "in the area" – not specific to Old Hunstanton or neighbouring villages. She relied upon the fact that there were 33 households on the register in housing need, the majority of whom were resident in Hunstanton (paragraph 8).

54. Although the Inspector must have been aware that only 2 of these were resident in Old Hunstanton, she did not go on to consider whether the other 31 households had any connection with Old Hunstanton and other rural settlements (Ringstead or Holme next the Sea). I was informed at the hearing that neither the Second nor Third Defendant had investigated the connection with Old Hunstanton, Ringstead or Holme next the Sea, if any, among those on the housing register. The current place of residence of those on the housing register is not the only factor pointing to housing need in a particular area. It is possible that those on the housing register living in Hunstanton are former residents of Old Hunstanton, or work there, or have some family connection to it (for example, adult children who have moved away because they are unable to find anywhere to live in the village). In my view, cases such as this would be capable of demonstrating housing need in Old Hunstanton. Equally, it is possible people on the housing register have no connection with Old Hunstanton; only with Hunstanton or further afield in the borough. In my view, such cases would not be capable of demonstrating housing need in Old Hunstanton.
55. At the hearing before me, the First and Second Defendants relied in particular upon the evidence of the Second Defendant that, at the public meeting in Old Hunstanton, there were expressions of interest in the proposed development from those with a connection to Old Hunstanton, and also in correspondence. It was submitted that this was sufficient to establish local need. I agree with Counsel for the Claimant that this evidence, as presented, does not demonstrate housing need; these are merely expressions of interest, which on closer investigation may, or may not, amount to "need", and which may, or may not, qualify as "local". The evidence is very general in nature, and the forms and letters relied upon are not in evidence. Importantly, the Inspector made no mention of this evidence in her Appeal Decision, and I cannot be satisfied that she relied upon it in reaching her decision. Also, set against the Second Defendant's evidence, was the evidence from objectors arguing that there was little identifiable local need, and the fact that only 6 dwellings had been allocated to Old Hunstanton in the emerging Site Allocations development plan document and yet 15 dwellings were now proposed. I do not consider that this court is able to make primary findings on housing need in this case, based on incomplete evidence, to compensate for shortcomings in an Inspector's decision. Nor can I accept the First Defendant's submission that even if the Inspector had correctly interpreted and applied the policies, it would have made no difference to the outcome. The evidence of local housing need is simply too uncertain.
56. The Second and Third Defendants entered into a section 106 TCPA 1990 agreement to ensure that the dwellings would remain affordable housing in perpetuity. It set out detailed criteria to ensure that the proposed dwellings would be allocated, in order of priority, first to those with a residential connection to Old Hunstanton; then to those with a residential connection to Hunstanton, Holme next the Sea, Ringstead and Heacham; then to those with an employment connection to Old Hunstanton; then to those with an employment connection to Hunstanton, Holme next the Sea, Ringstead and Heacham; and finally to those who had been residents of the Borough for more

than 5 years. These criteria were similar, though not identical, to the criteria in Appendix C to the 'Affordable Housing' policy. Whilst these criteria reflected the priority to be given to those with a connection to Old Hunstanton and to Ringstead and Holme next the Sea, they also prioritised those with a connection to Hunstanton and Heacham, which are not the type of small rural communities to which the Rural Exception Site policy applies. They also extended to anyone in any part of the Borough, even those areas which are not "local" to the development. The section 106 agreement did not, therefore, reflect the restrictions on the scope of the Rural Exception Site policy which I have identified, and which the Inspector did not apply.

57. It is fair to say that neither the Inspector nor the Defendants relied on the section 106 agreement as a tool to identify local housing need. Its purpose was to ensure that, once built, the dwellings were allocated as affordable housing, giving priority to those with local connections. Different considerations apply when allocating existing housing to those which apply in deciding whether or not to grant planning permission for a new development. Plainly, existing dwellings ought not to remain vacant, and so if there is insufficient local need, they may well have to be allocated to those without local connections. Therefore I make no findings on the appropriateness of the proposed allocation criteria, save to say that they could not be used to satisfy the "local need" requirement for the application of the Rural Exceptions Site policy.
58. I conclude, therefore, that the Inspector misinterpreted and misapplied the Rural Exception Site policy.
59. I also consider that, by failing to address expressly the Claimant's submissions on the proper interpretation and application of the policy, she did not give adequate reasons for her decision. In *South Bucks District Council and another v Porter (No 2)* [2004] 1 W.L.R. 1953, Lord Brown said:

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



substantially prejudiced by the failure to provide an adequately reasoned decision.”

60. The First Defendant submitted that the Inspector was not required to give reasons for rejecting the Claimant’s submissions because the main parties were in agreement as to the proper interpretation and application of the policy. However, Lord Brown’s guidance is not limited in that way. Indeed, he specifically refers to “unsuccessful opponents” to development as within the class of interested persons entitled to know and understand the basis upon which the decision was made. The Claimant has been prejudiced since it was unclear from the decision why the Inspector interpreted and applied the Rural Exception Site policy in the way that she did.
61. More generally, it seems to me that an Inspector ought to give reasons for his or her conclusions on any fundamental question raised about the proper interpretation of a development plan policy, as this is central to his or her statutory duty, under section 38(6) PCPA 2004, to determine an application for planning permission in accordance with the development plan, unless material considerations indicate otherwise.

### **Conclusions**

62. I have concluded that the Inspector misinterpreted and misapplied the Rural Exception Site policy, and failed to give adequate reasons for her decision. The Rural Exception Site policy permits development on green field sites in rural areas as an exception to the general rule which prevents such development in order to protect the countryside. The purpose of the policy is to provide affordable housing to meet the needs of small rural communities. The policy does not permit the affordable housing needs of local towns to be met by developing green field sites in small rural communities. Of course, different policies apply in relation to housing development within the existing development boundaries of villages.
63. For the reasons set out above, the Claimant’s application succeeds and the First Defendant’s decision is quashed.

