Case No: CO/1537/2015

Neutral Citation Number: [2015] EWHC 2660 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/09/2015

Before :

RHODRI PRICE LEWIS QC
(sitting as a deputy High Court Judge)
- -
Between :

	RAYMOND GILL	**Claimant**
	- and -	
	THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT **- and -** **CENTRAL BEDFORDSHIRE COUNCIL**	**Defendants**

- -
- -

Jonathan Darby (instructed by **Holmes & Hills LLP**) for the **Claimant**
Stephen Whale (instructed by the **Government Legal Department**) for the **First Defendant**
The Second Defendant did not appear and was not represented

Hearing date: 9 September 2015
- -

Judgment**The Deputy Judge (Rhodri Price Lewis QC) :**

Introduction

1. This is a claim under section 288 of the Town and Country Planning Act 1990 ("TCPA 1990"). The Claimant, Raymond Gill, seeks the quashing of the decision of the Inspector, Mr. J.D. Westbrook BSc (Hons), MSc, MRTPI appointed by the Secretary of State for Communities and Local Government, the First Defendant, contained in a decision letter dated the 24 February 2015. That decision letter dismissed the appeal

made by Mr Gill against the refusal of the Second Defendant to grant planning permission for the development proposed, described in the decision letter as "the change of use from stables to offices" on land at the rear of 100-114 Common Road, Kensworth, Bedfordshire. That site is within the area of the Second Defendant and is within the Green Belt.

2. The appeal under section 78 of the TCPA 1990 was conducted by way of exchanges of written representations in accordance with the Town and Country Planning (Appeals) (Written Representation Procedure) (England) Regulations 2009, SI 2009/452.

Grounds of challenge:

3. In summary the Claimant puts forward four grounds of challenge: -

i) The Inspector failed to have regard to the statutory duty under section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") to determine the application for planning permission in accordance with the development plan unless material considerations indicate otherwise;

ii) The Inspector failed properly to interpret and apply the National Planning Policy Framework (the "NPPF") with respect to the re-use of buildings in the Green Belt;

iii) The Inspector reached irrational and unreasonable conclusions unsupported by the facts/ and or evidence and/or professional assessment.

iv) The Inspector failed to have regard to a previous appeal decision relating to the site or failed to give adequate reasons for departing from it.

Relevant Legal Principles:

4. Section 288 of the 1990 Act provides as follows:

> "(1) If any person –
>
> (a) …
>
> (b) is aggrieved by any action on the part of the Secretary of State to which this section applied and wishes to question the validity of that action on the

grounds-

> (i) that the section is not within the powers of this Act, or
>
> (ii) that any of the relevant requirements have not been complied with in relation to that action,

He may make an application to the High Court under this section.

(2), (3), (4) …

On an application under this section the High Court –

> (a) …
>
> (b) if satisfied that the order or action in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it, may quash that order of action."

5. The determination of an appeal against a refusal of planning permission is an "action" within the meaning of section 288.

6. The general principles concerning the grounds upon which a Court may be asked to quash a decision of an Inspector or the Secretary of State are well established. I gratefully adopt the summary given by Lindblom J, as he then was, in *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin) in the following terms:

> "(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph" (see the judgment of Forbes J. in *Seddon Properties v Secretary of State for the Environment (1981) 42 P. & C.R. 26* , at p.28).
>
> (2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by

failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter (No. 2) [2004] 1 W.L.R. 1953* , at p.1964B-G).

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, "provided that it does not lapse into *Wednesbury* irrationality" to give material considerations "whatever weight [it] thinks fit or no weight at all" (see the speech of Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment [1995] 1 W.L.R. 759* , at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in *Newsmith v Secretary of State for [2001] EWHC Admin 74* , at paragraph 6).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council [2012] P.T.S.R. 983* , [2012] UKSC 13, at paragraphs 17 to 22).

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, *South Somerset District Council v The Secretary of State for the Environment* (1993) 66 P. & C.R. 80, at p.83E-H).

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in *Sea Land Power & Energy*

Limited v Secretary of State for Communities and Local Government [2012] EWHC 1419 (QB), at paragraph 58).

(7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. *Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government [2013] 1 P. & C.R. 6* , at paragraphs 12 to 14, citing the judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment [1992] 65 P. & C.R. 137* , at p.145)."

The Decision Letter:

7. The Inspector identified the main issues as he saw them in the following terms:

"6. The main issues in this case are:

- *Whether the proposed change of use represents inappropriate development in the Green Belt and, if so, whether the harm to the Green Belt by way of inappropriateness, and any other harm, is clearly outweighed by any other considerations,*
- *The effect of the proposal on the character and appearance of the countryside around Kensworth, and*
- *The effect of the proposal on the living conditions of the occupiers of neighbouring properties by way of noise and other disturbance."*

8. In dealing with Green Belt issues the Inspector wrote:

"10. The National Planning Policy Framework (NPPF) identifies 5 purposes of the Green Belt. One of these is to assist in safeguarding the countryside from encroachment. It goes on in paragraph 89 to note that certain developments should not be considered inappropriate. One of these exceptions relates to the provision of appropriate facilities for outdoor sport and recreation, as long as it preserved the openness of the Green belt and does not conflict with the purposes of including land within it. The existing building was built on the basis of a planning

permission for its retention as stables, which may be construed as not inappropriate in the Green Belt.

11. However, the building as constructed does not have the appearance of stables, since it includes a small domestic or commercial type window in the front elevation, and rooflights to the rear roof slope. Furthermore, I have no evidence before me that it has ever been used as stables and it has not been built in accordance with the earlier permission, in which the block apparently comprised 5 separate stables.

12. The application form indicates no change in the materials used from those in the existing building. However, the building as originally permitted would have had no windows. The building as existing has a small window in the front elevation and two rooflights. The building as proposed would have additional windows in the front elevation and a large window in the northern elevation. Moreover, it would have a new door with what appears to be side glazed elements in the front elevation, and all windows and doors would have security shutters. No detailed information has been provided regarding the materials used for these features.

13. Paragraph 90 of the NPPF indicates that the re-use of buildings need not be inappropriate provide that the buildings are of permanent and substantial construction; that it preserves the openness of the Green Belt and that it does not conflict with the purposes of including land within it. The proposal would represent the re-use of a building which, although not completed, is of a permanent and substantial construction. Moreover, the car parking associated with the use would appear to be contained largely on an existing hard-standing associated with an earlier building on the site.

14. However, the appeal site extends well beyond the confines of the building and car parking area and includes an access to the paddock beyond as well as some grassed areas. I have some concerns that this land could be used in some way for activities associated with the proposed B1 [that is, office] use, to the detriment of the openness of the Green Belt. In itself this could potentially be overcome by the use of appropriate conditions relating to landscaping and maintenance/management, but the use of the building for commercial B1 purposes, as opposed to stables relating to adjacent paddock areas, would represent an encroachment of an urban-type use into the countryside.

15. In conclusion on this issue, the current situation is complex.

The building as existing does not have the appearance of a stable block and would not appear to have been used as such. Nevertheless, it exists and I must consider the proposal in the light of NPPF policy on Green Belts as it relates to the re-use of existing buildings. In this instance, on balance, I find that the proposal would be inappropriate development in that it would represent an encroachment of urban-type development into the countryside and would, therefore, conflict with one of the purposes of including land within the Green Belt.

16. The appellant notes that the proposal would result in additional employment in the area. However, such employment would be very limited and I have no information as to the need for this type of employment in the Kensworth area. Any limited benefit would not clearly outweigh the substantial harm to the Green Belt that would be caused by this inappropriate development."

9. On the issue of the effect of the proposal on the countryside the Inspector concluded:

"18. Paragraph 17 of the NPPF deals with core planning principles and indicates, among other things, that planning should take account of different roles and character of different areas, including the recognition of the intrinsic character and beauty of the countryside. The appellant notes that the NPPF expects planning policies to support a prosperous rural economy by taking a positive approach to sustainable new development. In this case, however, the proposed development would add little to the rural economy of the area and it would run counter to the intrinsic character of the countryside around Kensworth. The building would have a commercial or even domestic appearance and it would not enhance or reinforce the character of the surrounding countryside. It would, on this basis, conflict with Policy BE8 of the South Bedfordshire Local Plan Review, 2004 (LP). It would also conflict with Policy NE3 of the LP which requires that development would have no adverse effect on the landscape character and setting of an Area of Great Landscape Value."

10. On the issue of the effect on living conditions he concluded:

"23. In conclusion on this issue, I find that the additional traffic that would be generated by the proposed use would be harmful to the living conditions of the occupiers of neighbouring residential properties as a result of the likely noise and disturbance caused

by conflicts in turning movements between vehicles associated with the B1 use, neighbouring residents, and users of the paddock areas beyond the site, together with footpath users. On this basis it would conflict with Policy BE8 of the LP, which requires that a proposed development should have no unacceptable adverse effect upon general or residential amenity."

11. He expressed his overall conclusions in the following way:

> *"27. In conclusion, I find that the proposal would be inappropriate development in the Green Belt, in that it would represent an encroachment of urban-type development into the countryside and it would, therefore, conflict with the purposes of including land within the Green Belt. It would also be harmful to the character and setting of the countryside around Kensworth and the Area of Great Landscape Value of which it is a part, by virtue of introducing an urban-type of use into an area otherwise typified by paddocks and surrounding farmland. Finally the proposal would result in harm to the living conditions of the occupiers of neighbouring dwellings by way of noise and disturbance associated with additional vehicular movements along the driveway, especially in the vicinity of the appeal site entrance.*
>
> *28. The appellant contends that the proposal would generate 3 jobs and support the local economy. However, this does not clearly outweigh the harm caused by inappropriateness and other harm as outlined above. There are, therefore, no very special circumstances to justify the proposal."*

12. He therefore dismissed the appeal.

Ground (i) – Section 38(6) of the 2004 Act:

13. ***The Claimant's submissions in summary:*** The Claimant submits that the Inspector failed to answer the question of whether the proposal before him was in accordance with the development plan read properly as a whole and that it is not possible to know from a fair reading of the decision letter whether the Inspector applied his mind properly to the plan led system. He made no reference in his decision letter to the duty under section 38(6) of the 2004 Act to determine the application for planning permission before him on appeal in accordance with the development plan unless material considerations indicated otherwise. A breach of a particular policy does not mean that a proposal is not in accordance with the development plan as a whole. The Inspector appears to have concluded that the proposal would conflict with policies BE8 and NE3 but the Claimant submits that a number of other policies were relevant and were referred to in the

planning officer's report to the relevant committee and in the reasons for refusal given by the Second Defendant but the Inspector left an unresolved tension between on the one hand the two policies referred to by him and other polices that the Inspector has not paid any or any proper regard to.

14. Further it is claimed in reliance on paragraphs 214 and 215 of the NPPF that the Inspector failed to analyse the consistency of the Local Plan with the policies of the NPPF and therefore failed to consider what weight could properly be attached to those policies in the Local Plan given that the Local Plan is dated 2004 and so predates the NPPF by some eight years. The Claimant gives as an example Policy GB3 which predates the NPPF and is more restrictive and therefore should carry limited weight but the Inspector does not refer to that policy even though it had been brought to his attention.

15. The Claimant submits that, as a result, the decision letter and its reasoning leave a genuine doubt in the reader's mind whether the Inspector did comply with his duty under section 38(6) and that has substantially prejudiced the Claimant who does not know whether any future scheme might or might not be successful nor what are the prospects of a challenge under section 288 on the basis of policies in the development plan.

16. ***The Defendant's Submissions in summary:*** The Defendant submits that on a fair reading of the decision letter as a whole it is clear that the Inspector implicitly concluded that the proposed development before him was <u>not</u> in accordance with the development plan. The Claimant's planning consultant had expressly referred the Inspector to section 38(6) and to its application in his appeal statement and as an expert in planning appointed by the First Defendant the Inspector can be expected to be familiar with this most basic of provisions in planning law and practice and with its meaning. There is no obligation on him to refer to it expressly in his decision letter. He did refer expressly to the Local Plan Review as comprising the development plan: see the decision letter ("DL") at paragraph 26 and found that the policies referred to by the Council appear to be consistent with the main thrust of policy in the NPPF and that they must therefore be afforded substantial weight: DL26 again. It is submitted that the Inspector made clear findings that the proposal conflicted with policies BE8 and NE3: see DL18 and DL23.

17. The Second Defendant submits that Policy GB3 is of no real relevance to this proposal and the Claimant's own planning consultant had written that it should be attributed "very little weight".

18. ***Discussion and Conclusions:*** In my judgment on a fair reading of the decision letter as a whole the Inspector did find that the appeal proposal before him was not in accordance with the development plan. He properly identified that the development plan comprised the Local Plan Review and that its relevant policies appeared to be consistent with the main thrust of national policy in the NPPF and so should be afforded substantial weight:

see DL26.

19. The development plan has to be read as a whole as policies may pull in different directions (see *R v Rochdale Metropolitan Borough Council ex parte Milne* [2000] EWHC 650 at [48] and *R (oao Laura C) v London Borough of Camden* [2001] EWHC (Admin) at [162]). In this case the policies which were relevant to the genuine issues before the Inspector were those he referred to in his decision letter namely Policy BE8 and NE3. In respect of Policy BE8 he found that the proposed development would not enhance or reinforce the character of the surrounding countryside as the policy seeks (see DL18) and it would have an unacceptable adverse effect on residential amenity contrary to the requirements of the policy: see DL23. In respect of Policy NE3 he found that the proposal would conflict with the requirement of that policy that a development should not have an adverse effect on the landscape character and setting of an Area of Great Landscape Value: see DL18.

20. Most fundamentally he found that the proposal before him was for inappropriate development in the Green Belt as it would represent an encroachment of urban-type development into the countryside and therefore would conflict with one of the purposes of including land within the Green Belt: see DL15. He found that the limited job creation would not outweigh this harm (DL16) and that there were no very special circumstances to justify the proposal (DL28). The policies on the Green Belt in the NPPF postdate the Local Plan Review but the Inspector considered that the policies in the Local Plan Review are consistent with the main thrust of relevant policy in the NPPF. He expressly applied the policies on the Green Belt in the NPPF to the proposal before him in DL10-15. No policies on the Green Belt in the Local Plan Review were identified to the Inspector which were "mutually irreconcilable" with the policies in the NPPF in a way which was more permissive of the grant of planning permission and which he therefore had expressly to consider in order to see whether one policy should give way to the another (see Lord Reed in *Tesco Stores v Dundee City Council* [2012] UKSC 13 at [19]).

21. The Claimant points to various policies in the Local Plan Review which the Inspector has not expressly referred to. Policy GB3 addresses limited infilling for housing, limited redevelopment and limited extension to non-residential property in certain named villages including Kensworth. This was a not a policy relied upon by the Second Defendant in its reasons for refusing planning permission and was not relied upon in the officer's report where it was reported that the Claimant was not claiming that his proposal was infill development. The proposal was not for housing. The other types of development addressed in this policy equally did not cover the proposal here. The policy was not therefore relevant. Policy SD1 requires that any proposal should be acceptable in terms of Green Belt policy and the Inspector found that this proposal was not acceptable in terms of the NPPF and the Claimant's own case was that the Green Belt policies of the Local Plan Review are more restrictive of development than the NPPF policies. This is a policy which the Claimant's written representations on the appeal advised was more restrictive than the NPPF and should be afforded very limited weight.

Policy NE12 allows for the re-use or conversion of a rural building in the Green Belt for non-residential purposes provided each of a number of criteria was met. The Inspector's express findings in relation to character and appearance, the effect on the countryside and the effect on living conditions meant that a number of those criteria were not met and it plain from a fair reading of the policy that each criterion has to be satisfied for a proposal to be in accordance with the policy. The Claimant's written representations on the appeal advised that this policy was more restrictive than paragraph 90 of the NPPF and so should be afforded limited weight. Policy T10 of the Local Plan Review deals with controlling parking in new development. It is not specific to the Green Belt and parking provision was not a reason for refusal and whilst the adequacy of parking exercised neighbours in their written representations it was not a main issue in the appeal and the Inspector did not dismiss the appeal because of any inadequacy in parking provision.

22. The law does not require Inspectors to include in their decisions an express conclusion as to whether or not a proposal is in accordance with the development plan or to adopt any particular mantra: see Lord Clyde in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447 at 1459H-1460C. In *R (Hampton Bishop Parish Council) v Herefordshire Council* [2015] 1 WLR 2367 at 2381D Richards LJ felt able to conclude that committee members had decided that the proposed development before them was not in accordance with the development plan even though there was no express reference to that conclusion in the officer's report. It is right that in *Tiviot Way Investments Ltd v Secretary of State for Communities and Local Government* [2015] EWHC 2489 (Admin) Patterson J agreed with the submission that:

> *"a finding of compliance or conflict with the development plan and the basis for it needs to be made so that the decision maker can proceed to undertake the planning balance in an informed way."* [27].

She observed:

> *"Such a step is not just form. Rather it is an essential part of the decision making process, so that not only the decision maker but also the reader of the Decision Letter is aware and can understand that the duty imposed under section 38(6) has been discharged properly by the decision maker."*

She concluded:

> *"It needs to be clear at the culmination of the decision-taking process what the eventual judgment is against the development plan as a whole."* [30].

23. However, Mrs Justice Patterson's judgment in *Dartford Borough Council v Secretary of State for Communities and Local Government* [2014] EWHC 2636 (Admin) makes it clear that that "eventual judgment" can be implied from a fair reading of the decision letter as a whole: see [39]-[40]. That is consistent with the approach of the Court of Appeal in the *Hampton Bishop* case and was accepted as being correct by Mr Darby on behalf of the Claimant.

24. In my judgment it is clear from a fair reading of the decision letter as a whole that the Inspector did find that the proposal before him was not in accordance with the development plan. He found that the proposal amounted to inappropriate development in the Green Belt applying the policies of the NPPF. He found that the relevant Local Plan Review policies were consistent with the general thrust of those policies and no policies in the Local Plan Review were relied upon as being more permissive of development in the Green Belt. There was no tension between the policies of the NPPF and the Local Plan Review on the Green Belt that he had to resolve. From the Claimant's own case it is clear that if the proposal was contrary to the Green Belt policies in the NPPF it would be contrary to what he characterised as the more restrictive Green Belt policies of the Local Plan Review. It was the Claimant's case that he did not need to advance very special circumstances to justify the development as inappropriate development in the Green Belt. The Inspector however found that the proposal before him would be inappropriate development in the Green Belt for the reasons he gave. He did consider the material considerations put forward in terms of jobs and support to the local economy but, given his finding that this would be inappropriate development, he had to consider whether those material considerations amounted to very special circumstances which would clearly outweigh the harm he identified and he found that they did not. In the circumstances of this case that was the exercise of the balancing exercise necessary having found that the proposal was not in accordance with the development plan. Adding to his conclusions on the Green Belt issues his express conclusions in relation to the effect on the countryside and the effect on living conditions and the breaches of policy he there identified, I am satisfied that this Inspector was aware of the duty under section 38(6), that he applied it and found implicitly that the proposal was not in accordance with the development plan and that the material considerations put before him did not indicate in those circumstances that planning permission should be granted. His reasoning does not leave any genuine doubt on these matters. His reasons are intelligible and adequate, enabling a fair reader to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues".

25. For all these reasons I reject ground (i).

Ground (ii): the interpretation and application of NPPF Green Belt policy

26. ***The Claimant's submissions in summary:*** The Claimant submits that it was at least arguable that as the proposal before the Inspector was for the retention of the existing building and then for its change of use, building operations were involved and so

paragraph 89 of the NPPF was engaged and the Inspector should have considered the last of the exceptions there listed to the inappropriateness of the construction of new buildings in the Green Belt, namely:

> *" ... the partial or complete redevelopment of previously developed sites (brownfield land) ...which would not have a greater impact on the openness of the Green Belt and the purposes of including land within it than the existing development."*

27. Further the Claimant submits that in relation to paragraph 90 of the NPPF the Inspector is unclear as to whether he was finding harm to the openness of the Green Belt and if so he failed to consider whether the concern could be addressed by attaching conditions to the grant of planning permission, as had been suggested in the officer's report.

28. Finally it is submitted that the Inspector failed to make clear whether he was finding substantial harm to the Green Belt in his DL16 or whether it was a case of substantial weight being given to any harm to the Green Belt as paragraph 88 of the NPPF advises should be the case. It is submitted that this is relevant to the balancing of very special circumstances against the harm identified.

29. ***The Defendant's Submissions in summary:*** In essence the Defendant submits that the Inspector correctly identified the first main issue before him and then correctly applied the policies in the NPPF to that issue. Paragraph 89 is not engaged in a case which does not involve the construction of a new building. Paragraphs 89 and 90 both contain provisos to the application of the exceptions contained within them to the inappropriateness of development in the Green Belt, namely that the development concerned does not have any greater impact upon or preserves the openness of the Green Belt and does not have any greater impact upon or does not conflict with the purposes of including land within the Green Belt and so, as the Inspector found there would be a conflict with the purpose of safeguarding the countryside from encroachment, those exceptions would not apply in any event.

30. As to the approach to very special circumstances it is submitted that as these were not argued before the Inspector because it was the Claimant's case that the development proposed was not inappropriate and so did not have to be justified by very special circumstances, these points cannot now be raised now: see *Humphris v Secretary of State for Communities and Local Government* [2012] EWHC 1237 (Admin).

31. ***Discussion and Conclusions:*** I agree with the Defendant's submissions. Paragraph 89 of the NPPF is not relevant to the proposal that was before the Inspector. The description of development was amended to refer to the retention of the building and its change of use to offices but it still did not involve the construction of a new building applying the

ordinary and natural meaning of those words. Furthermore, the Inspector made a clear finding that the proposed development would be inappropriate development because it would represent an encroachment of urban-type development into the countryside and would therefore conflict with the third of the five purposes of including land within the Green Belt: see DL14-15 and DL27. Therefore the exception to inappropriateness in the sixth and last bullet point of paragraph 89 did not apply and nor did the exceptions in paragraph 90. The Inspector was not relying on any impact on the openness of the Green Belt but reached his conclusion on inappropriateness because the type of commercial development proposed and the use of the building as offices would represent an encroachment of urban–type use and development into the countryside. He did not therefore need to consider whether any condition could control the use of the land around the building: he was concerned with the nature of the use proposed by the development.

32. I agree that it is not open now to the Claimant to complain as to how the Inspector approached the question of very special circumstances as the Claimant had disclaimed any reliance upon such circumstances. In any event the Inspector found that there would be "substantial harm" caused to the Green Belt by this inappropriate development (DL16) and it was for him to determine whether the new jobs and support for the economy would clearly outweigh the harm as he assessed it.

33. For those reasons I reject ground (ii).

Ground (iii): Conclusions unsupported by facts or evidence or professional assessments

34. ***The Claimant's submissions in summary:*** The Claimant relies on two matters: firstly the way the Inspector dealt with the traffic issue given the positive views of the relevant professional officers and, secondly, the way the Inspector dealt with the harm to the living conditions of the neighbours from that traffic in the context of policy BE8 which requires that a proposal should have no unacceptable adverse effect. It is submitted that the Inspector failed to analyse the harm to decide whether it amounted to an unacceptable adverse effect.

35. ***The Defendant's submission in summary:*** The Defendant submits that the highways officer and the rights of way officer provided a conditional endorsement of the proposal and any distinction drawn between the officers having no objections and the Inspector reporting that there were "no significant objections" is pedantry and is not the way decision letters should be read. Secondly, the Inspector assessed the harm to living conditions from the traffic and found that harm to amount to unacceptability.

36. ***Discussion and Conclusions:*** Decision letters should be read and construed in a reasonably flexible way. Decision letters are written principally for parties who know

what the issues between them are and what evidence and argument has been deployed on those issues. This ground does smack of pedantry. The Inspector is using the Highway Authority's representations to assess the amount of traffic likely to be generated and is then bringing his planning judgment to bear on the issue of whether the living conditions of neighbours would be unacceptably affected by the noise and disturbance from those traffic movements. These are quintessentially planning judgments for him to reach and there was ample material to enable him to do so. It was for him to judge whether the effect on general or residential amenity amounted to an unacceptable adverse impact contrary to the policy. He decided that it did. It was open to him to do so.

37. For these reasons I also reject ground (iii).

Ground (iv) – The previous appeal decision

38. ***The Claimant's submissions in summary:*** The Claimant relies on a previous appeal decision which was brought to the Inspector's attention but which he did not refer to in the decision letter. The earlier proposal was for *"a new 2 bedroom dwelling on the site of a previous barn style building (recently burnt to leave plinth walls and a foundation)."* In that decision letter the previous Inspector had written: *"To the extent that the built form of the building would largely replicate the earlier building which was found acceptable in this location, it would not harm the landscape of these areas"*. The Claimant submits that this earlier finding was relevant to the second main issue identified by the Inspector in the present appeal of the effect of the proposal on the character and appearance of the countryside around Kensworth. He submits that *"like cases should be decided in the same manner so that there is consistency in the appellate process"* (per Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* [1993] 65 P&CR 137 at 145) and in the event that an Inspector disagrees with the decision maker in a previous appeal which is similar on the facts *"he ought to have regard to the importance of consistency and give his reasons for the departure from the previous decisions"* (per Mann LJ ibid at p.145). In these circumstances the Claimant submits that the Inspector should have dealt expressly with this earlier appeal decision in his decision letter.

39. ***The Defendant's submission in summary:*** The Defendant submits that the earlier appeal is distinguishable and that it should not be inferred that the Inspector failed to have regard to that earlier decision referred to briefly in the written representations before him.

40. ***Discussion and Conclusions:*** It is right that the Inspector did not refer to this earlier decision in his decision letter. However, the earlier appeal related to the construction of a new dwelling on the site of an earlier barn. The appeal proposal before this Inspector was for the retention of an existing building and its change of use to offices. The

locations of the two proposals were therefore different albeit close by and the developments proposed were different in nature. In my judgment an assessment of the impact on the countryside of a new building in one location is sufficiently different from an assessment of the effect on the countryside of a change of use of an existing building in a different location albeit close by, and that the earlier decision was not sufficiently material as to oblige the Inspector to deal with the earlier decision in his decision letter: see Holgate J in *St Albans City and District Council v Secretary of State for Communities and Local Government* [2015] EWHC 655 (Admin) at [91] to [100]. In the *North Wiltshire* case Mann LJ suggested that "*a practical test"* for an Inspector to ask himself in these circumstances is:

> *"whether, if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case...Where there is disagreement then the Inspector must weigh the previous decision and give his reasons for departure from it".*

In my judgment the Inspector here had a sufficiently different proposal before him from the proposal before the earlier Inspector that he was not necessarily disagreeing with that earlier Inspector so as to oblige him to deal with that earlier decision in his decision letter.

41. I therefore reject ground (iv) also.

42. Mr Darby for the Claimant had included a fifth ground in his skeleton argument claiming that the Inspector had failed to address or properly address the submissions of the Claimant in the appeal but in oral argument Mr Darby made clear that that ground was not pursued as a stand alone ground but relied on the arguments being put forward in the earlier grounds. As I have rejected those other grounds it follows that I reject his fifth ground.

Conclusion:

43. For the above reasons the claim must be dismissed. I invite Counsel to draw up an appropriate order dealing also with the question of costs if that can be agreed.